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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE)
APPLICATIONS OF H2O, INC. AND)
JOHNSON UTILITIES COMPANY FOR)
AN EXTENSION OF THEIR)
CERTIFICATES OF CONVENIENCE AND)
NECESSITY.)

**DOCKET NOS. W-02234A-00-0371
WS-02987A-99-0583**

IN THE MATTER OF THE APPLICATION)
OF JOHNSON UTILITIES, L.L.C., DBA)
JOHNSON UTILITIES COMPANY, FOR)
AN EXTENSION OF ITS CERTIFICATE)
OF CONVENIENCE AND NECESSITY TO)
PROVIDE WATER AND WASTEWATER)
SERVICE TO THE PUBLIC IN THE)
DESCRIBED AREA IN PINAL COUNTY,)
ARIZONA.)

DOCKET NO. WS-02987A-00-0618

IN THE MATTER OF THE APPLICATION)
OF DIVERSIFIED WATER UTILITIES,)
INC. TO EXTEND ITS CERTIFICATE OF)
CONVENIENCE AND NECESSITY.)

DOCKET NO. W-02859A-00-0774

IN THE MATTER OF THE APPLICATION)
OF QUEEN CREEK WATER COMPANY)
TO EXTEND ITS CERTIFICATE OF)
CONVENIENCE AND NECESSITY.)

DOCKET NO. W-01395A-00-0784

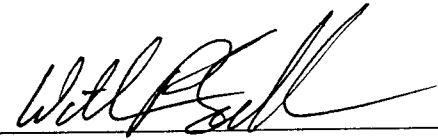
**DIVERSIFIED WATER UTILITIES, INC.'S NOTICE OF
FILING REBUTTAL TESTIMONY**

Diversified Water Utilities, Inc., by and through its attorney, hereby file the
Rebuttal Testimony of Scott Gray, President of Diversified Water Utilities, Inc.; Greg Potter,
Engineer for Diversified Water Utilities, Inc. and Jim Wright, Certified Operator for Diversified
Water Utilities, Inc.

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Respectfully submitted this 30th day of January 2001.

MARTINEZ & CURTIS, P.C.



William P. Sullivan, Esq.
2712 North Seventh Street
Phoenix, Arizona 85006-1090

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PROOF OF SERVICE AND
CERTIFICATE OF MAILING

I hereby certify that on this 30th day of January, 2001, I caused the foregoing document to be served on the Arizona Corporation Commission by hand-delivering the original and ten (10) copies of said document to:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

With copies of the foregoing mailed/hand-delivered this 30th day of January, 2001 to:

Marc Stern, Administrative Law Judge
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Teena Wolfe, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Deborah R. Scott
Utilities Division Director
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Thomas H. Campbell
Gregory Y. Harris
Lewis & Roca
40 N. Central Avenue
Phoenix, Arizona 85004
Attorneys for Johnson Utilities Company

Petra Schadeberg
Pantano Development Limited Partnership
3408 North 60th Street
Phoenix, Arizona 85018-6702
Intervenor


Jay Shapiro
Norman D. James
Karen E. Errant
Fennemore Craig
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012-2913
Attorneys for H2O, Inc.

Charles A. Bischoff
Jorden & Bischoff
4201 North 24th Street, Suite 300
Phoenix, Arizona 85016
Attorneys for Queen Creek Water

Richard N. Morrison
Salmon, Lewis & Weldon, P.L.C.
4444 North 32nd Street, Suite 200
Phoenix, Arizona 85018
Attorneys for LeSuer Investments, et al.

Kathy Aleman, Manager
Wolfcor, LLC & Wolfkin Farms
Southwest Properties, Inc.
3850 East Baseline Road, Suite 123
Mesa, Arizona 85206
Intervenor

Dick Maes, Project Manager
Vistoso Partners, LLC
1121 West Warner Road Suite 109
Tempe, Arizona 85284
Intervenor


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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 WILLIAM A. MUNDELL
4 CHAIRMAN
5 JIM IRVIN
6 COMMISSIONER
7 MARC SPITZER
8 COMMISSIONER

9 IN THE MATTER OF THE)
10 APPLICATIONS OF H2O, INC. AND)
11 JOHNSON UTILITIES COMPANY FOR)
12 AN EXTENSION OF THEIR)
13 CERTIFICATES OF CONVENIENCE AND)
14 NECESSITY.)

DOCKET NOS. W-02234A-00-0371
WS-02987A-99-0583

15 IN THE MATTER OF THE APPLICATION)
16 OF JOHNSON UTILITIES, L.L.C., DBA)
17 JOHNSON UTILITIES COMPANY, FOR)
18 AN EXTENSION OF ITS CERTIFICATE)
19 OF CONVENIENCE AND NECESSITY TO)
20 PROVIDE WATER AND WASTEWATER)
21 SERVICE TO THE PUBLIC IN THE)
22 DESCRIBED AREA IN PINAL COUNTY,)
23 ARIZONA.)

DOCKET NO. WS-02987A-00-0618

24 IN THE MATTER OF THE APPLICATION)
25 OF DIVERSIFIED WATER UTILITIES,)
26 INC. TO EXTEND ITS CERTIFICATE OF)
27 CONVENIENCE AND NECESSITY.)

DOCKET NO. W-02859A-00-0774

28 IN THE MATTER OF THE APPLICATION)
29 OF QUEEN CREEK WATER COMPANY)
30 TO EXTEND ITS CERTIFICATE OF)
31 CONVENIENCE AND NECESSITY.)

DOCKET NO. W-01395A-00-0784

32 **REBUTTAL TESTIMONY OF**
33 **SCOTT GRAY, PRESIDENT OF**
34 **DIVERSIFIED WATER UTILITIES, INC.**

35 **JANUARY 30, 2001**

REBUTTAL TESTIMONY OF SCOTT GRAY

DOCKET NOS. W-02234A-00-0371; WS-02987A-99-0583; WS-02987A-00-0618; W-02859A-00-0774 and
W-01395A-00-0784

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I. INTRODUCTION

Q: PLEASE STATE YOUR NAME AND RELATIONSHIP TO DIVERSIFIED WATER UTILITIES, INC.

A: My name is Scott W. Gray and I am currently the President of Diversified Water Utilities, Inc., an Arizona corporation.

Q. WHY DID YOU GET INVOLVED IN DIVERSIFIED WATER UTILITIES, INC. ("DWU")?

A. I have always been involved in community service. For example, in 1982, I helped establish and was on the founding Board of Directors of the Maricopa County Bar Association Volunteer Lawyers Program and in 1993, I received the distinguished Pro Bono award from the March of Dimes for my assistance with the "Mom Mobile" that assists pregnant women in obtaining prenatal care that cannot get to, or afford care. In 1994, I became aware of the troubled Quail Hollow Water Company and its customers' lack of good quality or reliable water service in a poor rural community. With encouragement of regulatory agencies, and in particular consumer services division of the Arizona Corporation Commission, I took over the system to address the deficiencies and problems.

I like being involved in providing good quality utility service to persons who for so long were neglected. I also knew that the area was at the edge of the valley's growth and therefore, was a good prospect for being economically viable and a profitable venture.

Q. WHAT IS YOUR BACKGROUND IN THE UTILITY BUSINESS?

A. I have been in the water and wastewater business from the early 1980's. My initial introduction to the water and wastewater business was through Oak Creek Utility

1 Corporation ("OC"). OC is a water and wastewater provider in Oak Creek Canyon,
2 Arizona, which is a very difficult and delicate place to operate a water and wastewater
3 company. OC was previously owned by a real estate developer and had a cease and desist
4 order against it from ADEQ along with a moratorium against hook-ons. I am the
5 President of OC and own, along with my wife, 100% of OC. We undertook each and
6 every requirement to bring OC into compliance and have kept it in compliance in this
7 difficult area for approximately 18 years. We received a letter from ADEQ in 1985
8 commending us for our efforts. A copy of the letter is attached as Exhibit A.

9
10 I am a certified operator, under ADEQ rules and regulations, of both water and
11 wastewater systems. I hold Grade I Operator Certificates in both water and wastewater
12 distribution systems. I have been certified for approximately 3 years.

13
14 Q. DO YOU HOLD ANY OTHER PROFESSIONAL LICENSES?

15 A. I am an attorney licensed to practice law in Arizona. My undergraduate degree is in
16 accounting. I additionally have an inactive Arizona Real Estate License. I have until
17 August 2001 to reinstate the License.

18
19 **II. HISTORY OF DIVERSIFIED WATER UTILITIES, INC.**

20
21 Q. PLEASE PROVIDE A BRIEF HISTORY OF DIVERSIFIED WATER UTILITIES, INC.

22 A. A Certificate of Convenience and Necessity was originally granted to serve the area in
23 1962 by Decision No. 33633-A to Quail Hollow Water Co. as the water service entity for
24 high-density subdivisions created in the early 60's, marketed and sold to out-of-state
25 residents. The real estate developers created the water company in conjunction with the
26 platting their development and issuing real estate reports. Very few residents moved onto

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1 the property and for approximately 30 years, the water company had no more than 40
2 customers.

3
4 In 1986, the real estate developers, Mr. Todd and Mr. Medland, acquired the company
5 (Decision No. 55739) and its 25 customer as a part their efforts to master plan the
6 development of the area. At the time DWU acquired the water system, in 1995, it was
7 comprised of a well, with a pumping capacity less than 50 gpm, a 5,000-hydromantic tank
8 and a single 4-inch service line approximately 1 mile in length and was serving 43
9 customers.

10
11 Prior to DWU acquiring the water system, ADEQ placed a cease and desist order against
12 the utility system for numerous violations and inadequacies. A court injunction and an
13 order were also filed. No action was taken by the previous owners to cure the
14 deficiencies.

15
16 After acquiring the water utility system, DWU took all steps necessary to eliminate the
17 deficiencies, to satisfy ADEQ's cease and desist order requirements and to bring all
18 testing current.

19
20 DWU has now replaced or refurbished the entire plant and made substantial
21 improvements to the system. All contractors have been instructed to install first quality
22 materials and products. The initial improvements acquisition following DWU's
23 acquisition include the following:

24 A. A 20,000-gallon water storage tank. (The water utility did not have any
25 water storage. At the time of installation, the 20,000-gallon storage tank resulted in
26 capacity substantially in excess of the amount required.)

REBUTTAL TESTIMONY OF SCOTT GRAY

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1 B. New electrical panels, controls and motor protection systems, including an
2 emergency notice system with multiple flashing emergency beacons.

3 C. Two Booster motors.

4 D. A pressurization system to pressurize the hydromantic tank and system.

5 E. A new pump system.

6 F. A chlorination treatment system.

7
8
9 Q. DID THE IMPROVEMENTS TO THE SYSTEM ALLOW GROWTH IN THE AREA?

10 A. Basically, the improvements made to date by DWU transformed a neglected and
11 deteriorated system into a new system. As mentioned, the prior owners were under a
12 cease and desist order and new hook-ups to the system were precluded until the
13 deficiencies were remanded. At the time the Company had 43 customers. After DWU's
14 acquisition and improvement of the system, our certificated area began to grow. We now
15 have approximately 170 customers, representing almost 400% growth since the
16 deficiencies were corrected in 1997.

17
18 Q. WHAT HAS BEEN THE NATURE OF THE GROWTH IN YOUR SERVICE AREA?

19 A. To date, only one 36-lot subdivision plat has been filed since DWU acquired the system.
20 We have three customers in that subdivision. Most growth has resulted from lot splitting
21 a 160-acre parcel and a 40-acre parcel. Each purchaser would resell the property in
22 smaller parcels until they ultimately were reduced to parcels of approximately 1 1/4 acre.
23 The lot splitting in DWU's service area was the subject of a front page Article in the
24 Arizona Republic for March 30, 1999. A copy of the Article is attached as Exhibit B.

REBUTTAL TESTIMONY OF SCOTT GRAY

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1 Q. DOES LOT-SPLITTING CREATE PROBLEMS FOR DWU?

2 A. Yes. Unfortunately, there is limited ability to require lot splitters to install the backbone
3 infrastructure to support the new demand reflected by the overall development of a lot
4 split area. DWU is forced to treat each lot separately. However, DWU, through its own
5 initiative and efforts has assured proper development of its system so that adequate flows
6 and pressures are maintained. Consequently, the water system for DWU is in virtually
7 new condition with excellent capacity flows and pressures. DWU has recently added
8 approximately three miles of 8" and 12" C-900 Class 200 distribution mains.

9
10 Q. HAS THE GROWTH AND LACK OF DEVELOPER ASSISTANCE CREATED ANY
11 PROBLEMS FOR DWU?

12 A. The growth has consumed the excess storage created with the improvements DWU had
13 installed in 1997 and 1998.

14
15 Q. WHAT HAS DWU DONE TO INCREASE ITS STORAGE AND PRODUCTION
16 CAPACITY?

17 A. Prior to intervening in these proceedings, DWU: a) was finalizing an agreement for the
18 purchase of a 1,000-gallon per minute well within its certificated area to provide
19 substantial capacity to DWU for its service needs; b) had secured ADEQ's approval to
20 construct a 250,000-gallon storage tank, a copy of which is attached as Exhibit C; and c)
21 had applied for a WIFA loan in the amount of \$378,000 for production and storage tank
22 improvements. WIFA has placed the DWU in the fundable range for this funding cycle, a
23 copy of which is attached as Exhibit D. DWU has filed an Application to approve the
24 financing and we request the Commission take notice of its Docket No. W-02859A-00-
25 0964 and incorporate the application herein.
26

REBUTTAL TESTIMONY OF SCOTT GRAY

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1 Once DWU intervened in these proceedings barriers were systematically created to
2 DWU's orderly process of improving its system. Johnson Utilities made an offer to
3 purchase the same wellsite that had repeatedly been committed to DWU. The owner of
4 the well is no longer willing to sell it to DWU. WIFA indicated it had been contacted by
5 representatives of Johnson Utilities and, as a result, was going to halt processing DWU's
6 WIFA application. Further, a concerted effort was made to foster dissatisfaction among
7 landowners and customers within DWU's existing certificated area. To halt improper
8 activities allegedly undertaken by Johnson Utilities, DWU filed an Application for
9 Temporary Order to Preserve Status Quo in Docket Nos. W-02234A-00-0775; WS-
10 02987A-00-0775 and W-02859A-00-0775. DWU asks the Commission to take notice of
11 those Dockets and incorporate them herein.

12
13 The addition of the new well and 250,000-gallon storage tank would have substantially
14 increased the storage and production capability of the system. These improvements to
15 DWU's production and storage capacity have unfortunately been delayed as a result of the
16 foregoing actions of Johnson Utilities, taken for the sole purpose of advantaging Johnson
17 Utilities' position in these proceedings; actions that are detrimental to the public interest.
18 Despite these obstacles, DWU has redirected its efforts and contracted for the
19 construction of a 200,000-gallon storage tank and is in the process of connecting a new
20 5,000-gallon pressure tank, which should be completed by the end of February.

21
22
23 Q. DID DWU MAKE IMPROVEMENTS TO ITS SYSTEM WITH THE INTENT TO BE
24 READY, WILLING AND ABLE TO SERVE DEVELOPMENTS IN THE VICINITY OF
25 ITS CERTIFICATED AREA, AS WELL AS WITHIN ITS CERTIFICATED AREA?

26 A. It has always been DWU's desire to serve any developments occurring west of Schnepf
Road and south of the Queen Creek Wash. DWU's franchised secured from Pinal County

1 in 1987, includes almost nine and one-half (9½) Sections south and west of DWU's
2 existing certificated area. Exhibit E, attached hereto, is a copy of DWU's franchised area.
3 The Queen Creek Wash is the current dividing line between DWU and the H2O CC&N.
4 DWU additionally intends to service areas to the south of its current CC&N area. The
5 eastern border of DWU is the CAP canal. The State of Arizona owns most of the land to
6 the immediate east and north of DWU's certificated area. DWU is ready, willing and able
7 to serve additional areas both within and outside its DWU's existing CC&N area,
8 consistent with the Commission's rules and regulations.
9

10 **III. THE CURRENT PROCEEDINGS**

11
12 Q. WHEN DID DWU FIRST BECOME AWARE OF THE CURRENT CC&N FILINGS
13 BY H2O AND JOHNSON UTILITIES FOR AREAS CONTIGUOUS TO THE CC&N
14 OF DWU?

15 A. DWU first became aware of the current CC&N proceedings while I was attending a party
16 on Sunday evening September 24, 2000. An acquaintance, discussing his company's
17 development activities in the Queen Creek area, was informing me of the proposed
18 development from the Pecan Grove area on Combs and Vineyard Roads. He informed me
19 that Johnson Utilities, Inc. was seeking an application to serve that area and that he was
20 unsure if the contiguous service provider, H2O, was challenging the application of
21 Johnson Utilities. The following Monday, September 25, 2000, I contacted Don Schnepf
22 of H2O to inform him of the information that I had received. Mr. Schnepf informed me
23 that he was aware of Johnson's desire and was challenging Johnson Utilities, over the
24 Pecan Grove area. At that time, Mr. Schnepf had informed me that Mr. Johnson was also
25 attempting to obtain a certificate for areas south of DWU's CC&N. Mr. Schnepf did not
26 inform me at that time that he was seeking an extension of H2O's CC&N to the property

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1 contiguous to the DWU service area along Schnepf and Combs Roads. Upon hearing of
2 the expansion attempts of Johnson Utilities contiguous to DWU, we immediately
3 reviewed the ACC files and obtained the CC&N requests of both H2O and Johnson
4 Utilities discovering for the first time the extent of the request for certification of areas
5 contiguous to and in the vicinity of DWU. In fact, Johnson Utilities seeks to extend the
6 sewer certificate within DWU's existing CC&N.

7
8 We were totally surprised by the proceedings. We had not been contacted by either utility
9 company or the ACC about these proceedings. Further, we had been in continuing
10 discussion with landowners, including a land development group within the requested
11 expansion areas and they had not informed us of any water service area expansion request.
12 We later determined these landowners, like ourselves, had not received any notice of any
13 CC&N expansion requests from H2O or Johnson Utilities.

14
15 We timely filed to intervene in the pending proceedings and also filed a competing
16 application to extend DWU's certificated area to include Sections 29, 28, 33 and 32 (if
17 decertified from H2O), T2S, R8E; Sections 5, 13, 14, 15, 16 and 23, T3S, R8E; and
18 Section 18, T3S, R9E.

19
20 **IV. COMMENTS TO STAFF REPORT**

21 Q. HAVE YOU REVIEWED THE JANUARY 9, 2001 STAFF REPORT?

22 A. Yes, I have.
23
24
25
26

REBUTTAL TESTIMONY OF SCOTT GRAY

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1 Q. DO YOU AGREE WITH THE STAFF'S RECOMMENDATIONS?

2 A. In part. DWU agrees with Staff that:

3 1. DWU should be certificated to serve water to:

- 4 a. Parcel 2 (Bella Vista Farms) being all of Sections 13, 14, 15, 16 and 23,
5 T2S, R8E; and
6 b. Parcel 24 being all of Section 18, T3S, R9E.

7 but, Staff erred by failing to recommend DWU be certificated to serve Section 28 and 33,
8 T2S, R8E.

9 2. H2O should be certificated to serve water to:

- 10 a. Parcel 14 (Johnson Farms) being the NE ¼ of Section 5, T2S, R8E; and
11 b. Parcel 15 (Pecan Ranch) being all of Section 29, T2S, R8E.

12 3. Johnson Utilities should be certificated to serve water to:

- 13 a. Parcel 4 (Whitehead) being the E ½ of W ½ of Section 31, T3S, R8E; and
14 b. Parcel 9 (Farley or Walker Butte) being the E ½ of Section 22; W ½ and
15 W ½ of NE ¼ of Section 23; SE ¼ of Section 25; E ½ of Section 27; E ½
16 of Section 34, T4S, R8E.

17 4. Johnson Utilities' requests for certification to serve water should be denied for:

- 18 a. Parcel 1 (Arizona Farms) being all of Section 1, T4S, R8E and Sections 4,
19 6 and N ½ of Section 7, T4S, R8E;-
20 b. Parcel 2 (Bella Vista Farms);
21 c. Parcel 3 (Jorde Farm or Bonanza Land Co.) being a portion of Section 2,
22 T3S, R7E, lying north of Hunt Highway right-of-way.
23 d. Parcel 5 (Skyline) being all of Section 12, T3S, R7E, lying North and East
24 of the Hunt Highway right-of-way and the W ½ of Section 7, T3S, R8E;
25
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REBUTTAL TESTIMONY OF SCOTT GRAY

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- e. Parcel 6 (Morning Sun Farms or Cravath) being all of Section 1, T3S, R7E;
 - f. Parcel 7 (Shelton) being the W ½ of W ½ of Section 8, T3S, R9E;
 - g. Parcel 8 (Various) being all of Section 28, T3S, R9E;
 - h. Parcel 10 (State of Arizona) being the SE ¼ of Section 10, NE ¼; W ½; N ½ of SE ¼; and SW ¼ of SE ¼ of Section 14; E ½ of Section 15; SE ¼ of Section 23; Section 26 and N ½ of Section 35, all in T4S, R8E;
 - i. Parcel 12 (Jorde/Morning Sun Farms or San Tan Shadows) being a portion of Section 2 lying N & E of Hunt Highway and a portion of Section 12 lying N of Hunt Highway in T3S, R7E;
 - j. Parcel 13 (BLM) being the SE ¼ of Section 12 and E ½ of Section 13, T4S, R8E;
 - k. Parcel 14 (Johnson Farms);
 - l. Parcel 15 (Pecan Ranch);
 - m. Parcel 16 (The Home Place) being all of Section 28, T2S, R8E;
 - n. Parcel 17 (Ware Farms) being the S ½ and NW ¼ of Section 33, T2S, R8E;
 - o. Parcel 18 (Various) being the NE ¼ of Section 33, T2S, R8E;
 - p. Parcel 20 (Pecan Estates) being Section 20, T2S, R8E; and
 - q. Parcels 11 and 22 (Circle Cross Ranch or El Dorado Holdings) being all of Section 31, T2S, R8E and Section 6, T3S, R8E.
5. H2O's request to be certificated to serve water should be denied for:
- a. Parcel 5 (Skyline); and
 - b. Parcel 6 (Morning Sun Farms).

REBUTTAL TESTIMONY OF SCOTT GRAY

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6. Queen Creek's request to be certificated to serve water should be denied for:

- a. Parcel 15 (Pecan Ranch);
- b. Parcel 16 (The Home Place);
- c. Parcel 17 (Ware Farms); and
- d. Parcel 18 (various).

DWU also conditionally agrees with Staff's Recommendation:

1. To grant Johnson Utilities the right to serve water to:
 - a. Parcel 21 (Dobson Farms, Section 36, T3S, R8E, Sections 30 and 31 T3S, R9E); and
 - b. Parcel 23 (Magma Ranch, S ½ of Section 20, T3S, R9E).
2. To grant H2O the right to serve water to Parcels 11 and 22 (Circle Cross Ranch).
3. To grant Johnson Utilities the right to serve sewer service to Parcels 2, 4, 9, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23.

Q. WHY IS DWU'S SUPPORT OF STAFF'S POSITION REGARDING PARCELS 21, 23, 11 AND 22 CONDITIONAL?

A. DWU opposes Staff's recommendation to grant H2O an extension of its certificate to encompass Sections 28 and 33, T2S, R8E (Parcels 16 (The Home Place), 17 (Ware Farms) and 18 (various)) because they are contiguous to DWU, DWU has facilities within a Section contiguous to each Parcel and DWU and the public would greatly benefit from the expansion of DWU's certificated area into these Sections which have developments on the verge of proceeding. If DWU is certificated to serve Sections 28 and 33, then it supports H2O's certification to serve Parcels 11 and 22 and Johnson Utilities' certification to serve Parcels 21 and 23. However, if H2O is certificated for Sections 28

REBUTTAL TESTIMONY OF SCOTT GRAY

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1 and 33, then DWU needs to expand further south beyond Bella Vista and Parcels 21 and
2 23 represent reasonable expansion areas.

3
4 Q. YOU ARE NOT SEEKING TO SERVE THE CIRCLE CROSS RANCH (PARCELS 11
5 AND 22), SO WHY DO YOU ONLY CONDITIONALLY SUPPORT STAFF'S
6 RECOMMENDATION TO CERTIFICATE H2O FOR THESE PARCELS?

7 A. H2O has been experiencing significant growth and has significant construction underway
8 or planned within its existing certificated area. The Pecan Estates and Johnson Farms
9 developments also indicate they are ready to proceed quickly. DWU believes H2O's
10 resources would be severely stretched if it was involved in expanding service to Pecan
11 Estates, Johnson Farms, Ware Farms, The Home Place and Circle Cross Ranch
12 simultaneously, especially in view of the expansions that are already being experienced
13 within its existing certificated area. The pre-filed testimony of Paul Gardner on behalf of
14 Queen Creek Water Company amply demonstrates the past limitations of H2O and the
15 Commission should be concerned that it not stretch H2O's resources too thin. As recently
16 as 1997, H2O had been suffering operating losses for several years and projected future
17 losses due to delinquent property taxes. See, 9/3/97 letter supporting need to settle
18 delinquent property taxes, attached as Exhibit F. DWU also feels Queen Creek is a fit and
19 proper entity to serve these two Parcels and reserves the right to support certification
20 thereof to Queen Creek at hearing.

21
22
23 Q. WHY DOES DWU ONLY CONDITIONALLY SUPPORT THE EXPANSION OF
24 JOHNSON UTILITIES' SEWER CERTIFICATE?

25 A. DWU supports certificating a sewer provider for any property with an approved water
26 provider. However, Johnson Utilities has not, at this time, demonstrated itself to be fit

REBUTTAL TESTIMONY OF SCOTT GRAY

DOCKET NOS. W-02234A-00-0371; WS-02987A-99-0583; WS-02987A-00-0618; W-02859A-00-0774 and
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1 and proper to hold the certificate for additional territory due to the numerous ADEQ
2 violations and customer complaints over the last three years. In fact, George Johnson
3 acknowledges there is currently a limitation on the number of sewer connections until
4 Johnson Utilities obtains a 208 approval. It would, therefore, be imprudent to issue an
5 unconditional certificate to Johnson Utilities for sewer service at this time. Any
6 certificate issued to Johnson Utilities for sewer service should be conditional upon
7 Johnson Utilities: 1) securing 208 approvals; 2) providing preliminary engineering plans
8 for a plant or plants, including the location thereof necessary to meet the needs of both its
9 existing and the new certificate areas; and 3) securing and maintaining compliance with
10 ADEQ for a twelve consecutive month period. Failure to meet all these conditions within
11 twelve months after the Decision in this matter should result in the certificate being
12 automatically rendered null and void.

13
14
15 Q. DOES DWU SUPPORT THE EQUITABLE DISTRIBUTION OF CERTIFICATED
16 AREAS AMONG ALL FOUR COMPETING WATER COMPANIES?

17 A. Yes. However, the growth potential in existing certificated areas must be seriously
18 considered in such division.

19
20 Both Queen Creek Water Company and Johnson Utilities have significant certificated
21 areas. Queen Creek Water Company's certificated area is by far the most developed.
22 According to Mr. Gardner, Queen Creek already serves over 2,000-metered customers and
23 has a certificated area encompassing approximately 31 square miles and is experiencing
24 quality growth. Johnson Utilities has experienced significant growth in the short time it
25 has existed and is already certificated to serve a massive territory. Johnson Utilities'
26 certificate already covers approximately 45 square miles. Within Johnson Utilities
existing CC&N, it anticipates 39,946 total residential metered customers and another 439

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1 acres of commercial development. The vast majority of this development is expected to
2 commence prior to 2002. See, Exhibit G, attached hereto, for chart of projections made
3 by Johnson Utilities. As evidenced by the Staff Report, Johnson Utilities is struggling to
4 meet the demands for service in its existing area and meet ADEQ regulations. See also,
5 Exhibits H and I, attached hereto, for copies of the Consent Order and First Amendment
6 thereto, and Exhibit J, attached hereto for a copy of Johnson Utilities 1999 Income
7 Statement reflecting operating losses of \$194,807. Further, Johnson Utilities has already
8 invested over 4,000,000 in water plant and almost 5,000,000 in sewer plant and is
9 presently requesting authority to issue Member's Capital, long-term notes and other
10 evidences of indebtedness totaling an additional \$6,41,321. See, Docket No. WS-02987-
11 00-0785. Unless the growth occurs within its certificated area, as projected, Johnson
12 Utilities and its ratepayers will face significant financial hardships for years to come. Yet,
13 Johnson Utilities' requested extension would expand its certificated areas (water and
14 sewer) another 26½ square miles.

15
16 H2O, like DWU, is more confined. H2O's certificated area encompasses eleven and one-
17 half (11½) Sections, while DWU's area encompasses only nine (9) Sections four of
18 which are owned by the State of Arizona. However, H2O has a number of quality on-
19 going projects within its certificated area (e.g., Ocotillo Meadows and Links Estate).

20
21 In contrast, DWU has only a 36-lot subdivision under active development and will be
22 substantially benefited by the type of development proposed in Sections 28 and 33, T2S,
23 R8E (e.g., Ware Farms and The Home Place) and in Sections 13, 14, 15, 16, and 23, T3S,
24 R8E (Bella Vista Farms). A copy of the land use plans for The Home Place and Ware
25 Farms are attached as Exhibits K and L, attached hereto. As demonstrated by these land
26 use plans, major transmission lines will be constructed to Schnepf Road where they could

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1 be readily interconnected with DWU's existing system providing significant
2 enhancements to DWU and the members of the public served by DWU. Another
3 important factor to be considered is the fact that approximately 40% of DWU's existing
4 certificated area is owned by the State of Arizona and the prospect for development of
5 State land is more distant than those represented by Parcels 16 (The Home Place), 17
6 (Ware Farms), 19 (Various), 2 (Bella Vista Farms) and 24.

7
8 The Commission has recognized the need to assist small water companies to grow and
9 become stronger. By foreclosing DWU's opportunity to expand into Sections 28 and 33,
10 T2S, R8E or further south to Bella Vista Farms or even Dobson Farms (Parcel 21) and
11 Magma Ranch (Parcel 23), the Commission will be ensuring that DWU will remain a
12 relatively small water company and foreclosing its customers of the economics of scale
13 and reliability associated with the moderate growth DWU is requesting by its Application
14 for extension. DWU is requesting to serve only a small percentage of both the land mass
15 and population represented by this massive CC&N application, not to mention the
16 massive areas already encompassed within Johnson Utilities and Queen Creek's existing
17 certificates.

18
19 According to the County, The Home Place, in Section 28, represents the potential of
20 2,174-metered connections (dwelling units), Ware Farms, in Section 33, represents the
21 potential of 1,485-metered connections and Bella Vista Farms represents potentially
22 12,818-metered connections. See, Exhibit M, attached hereto. Ware Farms appears to be
23 the most likely to develop in the near future. The Home Place should follow shortly
24 thereafter. Both will enable DWU to loop its facilities that exist in the southern portion of
25 Section 3, T3S, R8E and in the northern half of Section 34, T2S, R8E through
26 interconnection with the water distribution systems that will be constructed to service

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1 Ware Farms and The Home Place. Otherwise, DWU will either end up with a system that
2 is never looped (which would require larger transmission lines to move water throughout
3 its system) or it will be required to extend its facilities for approximately 1½ miles
4 without any service connections thereon creating the potential for significant stagnant
5 water issues. Of course, DWU's small customer base would be required to bear the costs
6 associated with such facilities. The public interest will be served by allowing DWU to
7 square up its certificated area by encompassing Sections 28 and 33.

8
9 Q. WHY ELSE SHOULD DWU BE CERTIFICATED TO SERVE SECTIONS 28, AND
10 33, T2S, R8E AND SECTIONS 13, 14, 15, 16 AND 23, T3S, R8E, PINAL COUNTY,
11 ARIZONA?

12 A. There are numerous reasons why DWU should serve the requested areas:

13 1. Our system is new.

14 2. With the installation of the additional storage facility, we will have
15 capacity available to provide service to new customers.

16 3. Our existing service lines are less than 4,000 feet from the Ware Farm
17 development. We have 12 and 8 inch C-900 Class 200 new transmission pipe within 50
18 feet from the Bella Vista Farms project.

19 4. Bella Vista Farms is one contiguous development for which one and one-
20 half (1½) Sections of the development are already within DWU's certificated service area.
21 Bella Vista Farms is a natural growth area of DWU. A single service provider providing
22 the particular utility service provides consistency and efficiency.

23 5. DWU will take whatever steps are necessary to increase production and
24 storage capacity as and when required to meet future development through a combination
25 of advances, funds raised through its connection fee, debt and equity.

26 6. The requested northwestern certification area (Sections 28 and 33, T2S,

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1 R8E) is also contiguous to DWU's certificated area and has a higher possibility of growth
2 within a closer timeframe than the current certificated area of DWU. Such growth will
3 serve to strengthen the overall viability of DWU.

4 7. The expansion areas contain wells that could be converted to potable use,
5 thereby satisfying an important operating need for DWU to substitute for the lost well
6 opportunity thwarted by the actions of Johnson Utilities, as more fully set forth in Docket
7 Nos. W-02234-A-00-0775; WS-02987-A-00-0775; and W-02859A-00-0775.

8 8. Johnson Utilities and Queen Creek Water Company already possess very
9 large certificated areas and H2O's certificated area, with twice as much prompt
10 development potential than DWU. All are already experiencing good quality growth and
11 do not require any additional service area to assure them viability or economies of scale.

12 9. There are substantial questions about Johnson Utilities and H2O's need for
13 additional areas and their ability to meet the needs within their existing certificated areas
14 due to the difficulties they are having serving their current locations, as noted in the Staff
15 Reports relating to Johnson Utilities and Queen Creek's and Johnson Utilities' previously
16 filed Testimony in Docket Nos. W-02234A-00-0371 and WS-02987A-99-0583 relating to
17 H2O.
18

19 10. DWU has battled problem after problem (such as neglectful developers-
20 owners, a cease and desist order, lot-splitters, the efforts of Johnson Utilities to interfere
21 with DWU's WIFA Application, and with DWU's efforts to secure a second well, and
22 now the efforts of its three neighboring water companies to preclude it from expanding).
23 DWU needs and deserves quality developments that can assist in the proper build-out and
24 improvement of its water systems.

25 11. DWU is a strong and viable company and has significantly lower operating
26 losses and plant more closely sized to existing needs than Johnson Utilities. Such plant

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1 additions represent very burdensome capital costs to Johnson Utilities for which the
2 ratepayers will ultimately be asked to pay.

3 12. DWU has eliminated the need for a specialized compliance officer to
4 monitor the Quail Hollow system and removed a similar burden from the ACC and the
5 Pinal County Emergency Service. DWU undertook efforts to acquire this system with the
6 encouragement of ACC's compliance division.

7 13. Engineering requirements to loop the system and connect the extended
8 ends of each system efficiently and economically will reduce the size of pipe and travel
9 time for water service and provide emergency service requirements, such as fire flow.

10 14. Expansion will allow DWU to grow and be able to more quickly add
11 personnel and equipment to further meet its obligations to provide quality water service to
12 its customers.

13 15. DWU's predecessor in interest had previously stated readiness,
14 willingness, ability and intent to serve areas beyond its certificated areas when it requested
15 to expand its certificated area "for economy of scale and financial viability" in 1986, but no
16 public need was found to exist at that time. DWU's Pinal County Franchise has included
17 this southern expansion area since 1987.

18 16. There are natural and manmade boundaries on the east and north of
19 DWU's current certificated area. The CAP canal lies to the east, limiting DWU's eastern
20 expansion. Queen Creek Wash lies to the north, creating a natural boundary line.
21 Crossing these boundaries, as would be required by H2O, but not DWU, in order to serve
22 Ware Farms and The Home Place, would be unduly costly and should be avoided.

23 17. DWU's current certificated area contains a large percentage of State lands,
24 which will not likely develop in the near future. The existence of State lands further limit
25 DWU's ability to expand to the north and east and to a lesser degree to the South.
26

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1
2 Q. HOW WILL DWU BE ADVERSELY AFFECTED IF THESE AREAS ARE
3 CERTIFICATED TO ANOTHER PROVIDER?

4 A. First, DWU wants to make it clear it has no objection to Johnson Utilities offering sewer
5 service within its certificated area under the conditions earlier discussed. However, sewer
6 is a separate and distinguishable utility service. Sewer service is separately regulated and
7 requires separate and independent transmission lines, treatment and procedures. Sewer
8 service is regulated by a different set of rules and agency requirements and reports. The
9 rates, tariffs and charges for sewer service are independently determined.

10
11 DWU and its customers will be substantially and irrevocably injured if Johnson Utilities,
12 H2O or Queen Creek are granted certifications in Sections 28 or 33, T2S, R8E or Sections
13 13, 14, 15, 16 and 23, T3S, R8E and Section 18, T3S, R9E, DWU is now requesting.

14
15 It is important to DWU that it be able to connect its lines in a looped fashion in
16 accordance with proper engineering physics and service requirements. The franchised
17 area of DWU is in an "L" configuration. Currently, DWU will be required to move at
18 substantial excessive distances water produced at one end of the service area to water at
19 the other service area. This mandates larger lines and more booster stations. Further, in
20 order to plan for emergencies, such as fire flow, even larger water lines and additional
21 pressure pumping stations would be needed to move water over the greater distances. In
22 addition to the benefits of growth from the service areas at issue, DWU will be able to
23 loop its system and provide a much more direct route for the transmission of water
24 resulting in smaller transmission line sizes and lessening pumping requirements. The
25 direct lines will allow for a more efficient and economical operation and less cost to its
26 customers. DWU will also lose the opportunity to acquire one or more existing wells or

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1 well sites in the expansion area.

2
3 The northwest area has the greatest potential for prompt development. H2O and Queen
4 Creek Water are already experiencing significant growth in the vicinity of Sections 28 and
5 33, T2S, R8E (The Home Place and Ware Farms). Both H2O and Queen Creek have
6 large developer backed projects and subdivisions currently underway. This type of
7 development will also strengthen DWU's operations.

8 DWU has constructed its system and is developing its operations with the intentions of
9 serving the additional locations as evidenced by its 1986 application to expand its CC&N
10 to the southwest and the County Franchise it acquired at that time. See Exhibit E.
11 Allowing others to develop areas contiguous to DWU will unreasonable confine DWU's
12 service.
13

14
15 Q. WHY WILL IT BE MORE DIFFICULT FOR OTHER UTILITY COMPANIES TO
16 SERVICE THE NORTHWEST AND SOUTHERN AREAS DWU IS REQUESTING?

17 A. The area now served by DWU was certificated in 1962. Thirty-five years later (1987)
18 there were only 20 customers. When DWU acquired the Company in 1995, there were
19 only 43 customers and ADEQ deficiencies prohibited additional connections. DWU
20 made significant improvements to the water system, corrected deficiencies and planned
21 for future growth. Neither h2) or Queen Creek intervened to assist Quail Hollow. Now
22 that growth is possible, H2O, Johnson and Queen Creek are acting in a concert to deprive
23 DWU of an opportunity to serve the growth areas.

24
25 The other utility companies requesting the northwest and southern franchised areas are not
26 in the best position to service those areas for the following reasons:

1. Johnson Utilities' operations are very distant and it does not have any

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1 production, storage or transmission facilities within miles of the requested service area.
2 Any operations initiated by Johnson Utilities will be isolated and will be equivalent to
3 allowing a brand new utility to service the area without any related operations. Johnson
4 Utilities is already experiencing significant ADEQ violations and consumer complaints as
5 it attempts to meet its far-flung service obligations. See, Exhibits H and I.

6 2. Queen Creek Water Company is additionally distant from the operations
7 and the northwest service areas, especially Sections 28 and 33, T2S, R8E, will be a
8 significant reach for Queen Creek Water.

9 3. H2O does have service facilities in proximity to portions of the northwest
10 contested area. However, the northern boundary of the requested northwest area is
11 comprised of Queen Creek Wash, which currently separates the existing divide between
12 H2O and DWU. The Queen Creek Wash is approximately 300 feet wide and handles
13 significant flows of water during monsoon storms. The torrents in the wash can be
14 destructive to the water lines placing the customers within the northwest franchised area
15 in jeopardy of losing service or paying for costly Wash crossings. Further, governmental
16 approvals and permits will be required to cross the Queen Creek Wash. DWU does not
17 have any such problems or natural hazards to serving the northwest area.

18 4. Queen Creek Water and H2O currently have large substantial projects
19 underway and do not require additional service area to strengthen their viability.

20 5. The southern and northwest service area are divided by state lands for
21 which current development is not anticipated and may have a long-standing break in the
22 service requirements providing a natural buffer between the DWU system and that of
23 Johnson Utilities.
24

25 6. The discussion of a sewer CC&N request at these hearings, if appropriate
26 at all, is an attempt to distract the Commission from the issues before the Commission

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1 being the granting of a CC&N for water. The sewer CC&N sought by Johnson is not in
2 dispute and should be granted. Moreover, DWU welcomes centralized sewer services and
3 will take any and all reasonable steps to assist Johnson Utilities in providing the sewer
4 service. These steps include the coordination of line installations and turnoff tariffs, if
5 necessary. It should be noted that water and wastewater lines cannot share the same
6 trench and no savings will result in the construction process of a water and wastewater
7 system as could be saved in a telephone and electricity service company. Johnson is
8 seeking a sewer CC&N for areas that it is not providing water and sewer systems can be
9 separately ran, and are separately ran without providing any other utility services. The
10 request for sewer has no bearing to or involvement with the water CC&Ns. As previously
11 noted, there are no shared facilities. Water and sewer are separately regulated, licensed,
12 reported, taxed and operated. Further, there is nothing to preclude, at some later date,
13 from transferring, disposing of or assigning its sewer franchise to another.
14

15 7. Finally, the Commission should scrutinize the tactics taken, especially by
16 Johnson Utilities, to preclude DWU from a fair and equitable opportunity to secure and
17 improve its system. None of the other three utilities competing for this territory has
18 demonstrated any concern for the members of the public served by DWU whose service
19 reliability has been so cavalierly threatened by Johnson Utilities. Such disregard for the
20 impact on the members of the public we are obligated to serve and for other neighboring
21 public service corporations should weigh heavily on the Commission's determination in
22 this matter.
23

24 Q. DO YOU AGREE WITH THE CONDITIONAL NATURE OF THE CERTIFICATES
25 PROPOSED BY STAFF?

26 A. No. DWU concurs with Staff that the magnitude of development suggested in these

REBUTTAL TESTIMONY OF SCOTT GRAY

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1 filings is tremendous and somewhat speculative. Therefore, DWU does not oppose filing
2 regular reports with the Staff for a reasonable period after the certificate is granted.
3 However, DWU strongly opposes any automatic revocation of DWU's certificate simply
4 because development did not occur within two years or facilities were not installed in an
5 area within two years. In all of the areas where Staff has recommended a certificate be
6 issued to DWU and the additional areas DWU is requesting herein, the landowners have
7 all expended significant sums in master planning their areas. Further, once an area is
8 included within a certificated area, the water company will build its existing system
9 recognizing that it has the ultimate responsibility to service these additional areas.
10 DWU's requested expansion represents a modest sized, compact and totally contiguous
11 certificated area. It makes no sense to decertify this area once certificated.

12
13 After reluctantly entering this certification fray to obtain additional service territory for the
14 benefit of its customers, DWU has suffered significant abuses at tremendous cost and
15 expense. DWU does not believe it is in the interest of any party to these proceedings, the
16 ACC, DWU's customers or landowners within DWU's certificated area to repeat these
17 difficult proceedings in two years or to encourage renewed attacks on DWU's ability to
18 render service. Such a condition would not serve the public good in this instance. For
19 these reasons, DWU opposes making the extension of DWU's certificate conditional on
20 growth occurring within a time certain.

21
22 The same rationale does not necessarily apply to Johnson Utilities. Its certificated area is
23 far-flung and discontiguous. It very well may be in the public interest to decertify isolated
24 areas recommended for certification to Johnson Utilities so that a closer utility would
25 have the right to provide service in a more economical fashion in the future. Unlike
26 Johnson Utilities, no other utility is proposing expansions that will cause it to create

discontiguous systems.

V. SUMMARY

Q. WOULD YOU SUMMARIZE DWU'S POSITION REGARDING STAFF'S REPORT.

A. Generally, DWU is supportive of Staff. Our major opposition to Staff's Report lies in the failure to grant DWU an extension of its certificated area to encompass Sections 28 and 33, T2S, R8E and the conditional nature of the certificates being granted to DWU. Although commending Staff for the efforts it has undertaken to fairly and fully consider the public interest in this hotly contested matter, DWU does not believe Staff has fully considered the economic realities associated with its proposed division of service territory. Considering economic viability as a key aspect to this case, DWU respectfully requests that the Commission grant its request to extend DWU's certificated area to include Sections 28 and 33, T2S, R8E and Sections 13, 14, 15, 16 and 23, T3S, R8E and Section 18, T3S, R9E.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

EXHIBIT A



ARIZONA DEPARTMENT OF HEALTH SERVICES

BRUCE BABBITT, Governor
LLOYD F. NOVICK, M.D., M.P.H., Director

April 12, 1985

Mr. Scott Gray
Oak Creek Utility Corporation
5951 East Calle Del Paisano
Phoenix, AZ 85018

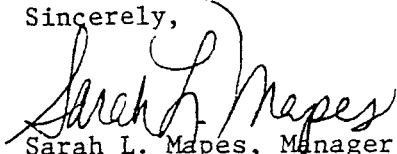
Re: Close out of the Cease and Desist Orders in the Matters of the
R & S Utilities Water and Wastewater Treatment Systems, a.k.a.
Oak Creek Utility Corporation
Facility Nos. 03-004, 33-124; Docket No. D83-154

Dear Mr. Gray:

The cease and desist orders, issued against the R & S Utilities Water (May 29, 1983) and Wastewater (July 19, 1983) Systems and now known as Oak Creek Utility Corporation, have been closed out. According to our Northern Regional Office in Flagstaff, all of the requirements set forth in the orders have been substantially completed and no further legal action is being contemplated on these matters.

Let me commend you for your diligence and costly measures taken to correct the problems at the facilities. Your effort is especially laudable because of the poor compliance record and physical condition of the water and wastewater systems prior to their acquisition by the Oak Creek Utility Corporation.

Sincerely,


Sarah L. Mapes, Manager
Compliance Section
Office of Waste and Water
Quality Management

SLM:BL:ds

cc: Coconino County Health Department
Environmental Protection Unit, Attorney General's Office
Don Schmid, Director's Office
Northern Regional Office
Benson Lee, Water/Wastewater Compliance Unit

EXHIBIT B

motor vehicle Division records indicate that, as of Jan. 13, 130,962 licenses had been either suspended or revoked.

spend time working for someone who owes a \$100 traffic fine," said Sgt. Ken Fixel of the Gilbert Police Department. "They're wrong."

Daily, municipal and justice courts across the state automatically levy fines and suspend the driver's licenses of ticket no-shows. A subsequent traffic stop means a criminal citation for driving on a suspended license, or it could mean a trip to jail, depending on the seriousness of the original violation. "People are shocked," Fixel said. "They ask, 'What do you mean, you have to handcuff me and I have to ride in the back of a police car?' Some are in tears,

— Please see **DRIVERS**, Page A2



Associated Press

Teuta Kelimendi, 20, tries to comfort her mother, Negimije, on Monday after Serb forces drove them from their home in Kosovo.

accounts of separating children and mothers.

One group riding in the back of a dump truck told of their neighbor, Vefat Rexhem, a deaf man, who failed to respond quickly enough to a Serb policeman's order to salute. The policeman punched him and then shot him dead in front of his wife and their two children.

INSIDE
'PURPLE PEOPLE EATERS':
Abundant reports of Serb terror. A7.

— Please see **TRAIL**, Page A6

NO EASY OPTIONS:
Escalating ethnic cleansing produces Clinton foreign policy nightmare. A7.

Officials caught up in land-splitting probe

By Edythe Jensen and Mike McCloy
The Arizona Republic

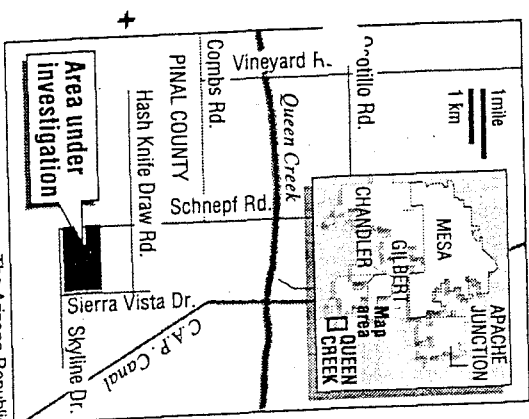
Pinal County officials have clamped a building moratorium on 320 acres near Queen Creek pending a state probe into land dealings of partnerships that include a depu-

ty Maricopa County attorney, Superior Court judge and state legislator. Pinal County is accusing sellers, buyers and agents of illegally subdividing half a square mile, violating an Arizona law designed to prevent haphazard development.



Sherrie Buzby/Special for The Republic

Debra and John Gordon look over the land they live on in Pinal County. A state investigation into the way their land was subdivided has caused them delays and problems.



The Arizona Republic

ty Maricopa County attorney, Superior Court judge and state legislator. Pinal County is accusing sellers, buyers and agents of illegally subdividing half a square mile, violating an Arizona law designed to prevent haphazard development.

Most said they did nothing wrong, insisting that they split their land only as many times as state law allows.

2-offic patrol next b
By William Herm and Chris Fiscu
The Arizona Republic
In the wake of violence against is considering h cers and puttin

Pinal County Planning Director Dennis Cady said this is likely to be one of the largest land-splitting investigations in Arizona history.

MONTINI:
Tributes collect, people reflect at shooting site. B1.

The practice — dividing up real estate without paved roads, approved utilities and without a nod from government — can permanently blight rural areas in the path of growth, Pinal County Supervisor Sandie Smith said.

ATKINSON, Phoe
cers in each pa during the week "This was do morale," said S "The recent sh course, worried Officers' loved

Motivation for such dealings, said state Sen. Tom Freestone R-Mesa, who wants the state to keep the practice under control, "is greed, pure greed."

— Please see **BUILDING**, Page A2

— Please see

Building halted in Pinal land probe

— BUILDING, from Page A1

The once-rural land three miles southeast of Queen Creek has already been carved into more than 90 home sites with no dedicated streets. Instead, they have dirt roads so narrow and bumpy that school buses can't use them.

Named in investigative reports as the original landowners are two real estate partnerships headed by Deputy Maricopa County Attorney Lawrence Cutler and Scottsdale golf course developer Sid White. Among Cutler's limited partners are Superior Court Judge Pete Reinstein and state Rep. Tom Horne, R-Phoenix.

On March 15, Horne's vote in the House helped pass a bill that would loosen real estate regulations.

"We are strongly opposed to this bill," deputy state real estate commissioner John King told a Senate committee Friday. "It will be extremely difficult or impossible to stop illegal subdivisions."

The committee, headed by Freestone, initially killed the bill. But House Speaker Jeff Groskost, R-Mesa, appeared after the vote, and the measure was approved on reconsideration. It could be debated by the Senate within a week.

Freestone, a vocal opponent of the bill, said he will fight to defeat it on the Senate floor this week.

Present at the committee hearing were Maricopa County Supervisor Don Stapley and his real estate business partner, Wilford Cardon. Their partnerships' land-splitting in Pinal County came under investigation for allegations of subdivision law violations since 1997. Records in the Attorney General's Office show the case is still under investigation, but Stapley is no longer a subject of the probe.

Horne said he did not know about his partnership's land activity or that it was named in a Pinal County complaint. Had he known, he said, he would not have voted on the bill.

Horne, who is an attorney, said limited partners in a real estate partnership are investors who do not participate in decision-making.

Reinstein said he invested with Cutler more than a decade ago when both were deputy county attorneys and said he knew nothing of the investigation or building permit moratorium.

Roy Tanney, director of the Real Estate Department's subdivision division, said the incentive to subdivide illegally is money.

"The biggest expense in a sub-



Lawrence Cutler / The deputy county attorney headed a real estate partnership in the land deal.



Tom Horne / Named as one of Cutler's limited partners, he said he did not know of the land activity.



Pete Reinstein / Another limited partner, the judge said he knew nothing of the probe.

that was once part of White's partnership's holding.

Tanney said key pieces of evidence in proving the sellers and buyers were acting in concert are lot releases. By releasing lots as security for financing, sellers allow buyers to sell off portions of their purchase in a chain that

avoids the lot-split limits on the original parcel.

Cutler, a deputy Maricopa County attorney who is also a licensed real estate agent, is one of two general partners in First Queen Creek Investors Ltd., which once controlled the entire 320 acres. The other general partner is Scottsdale real estate broker Earl Schwartz.

Cutler said his partnership purchased the entire parcel about 15 years ago. The real estate downturn in the late 1980s forced the partnership to relinquish 160 acres to the seller — White's partnership, Queen Creek Investments Ltd., Cutler said.

Last year, Cutler's partnership's remaining 160 acres was split and sold to five other investors; one of those investors split his portion three times before the building permit moratorium went into effect.

Cutler said the current owners of the 160 acres once controlled by his partnership are now seeking official subdivision approval and rezoning.

McGrath confirmed that application for rezoning was made for the land after the building moratorium was imposed. If it is approved, the moratorium will be lifted on that portion of the acreage.

According to a letter written by McGrath to the Department of Real Estate, there is evidence that Cutler's and White's partnerships are related through trusts.

Cutler disputes that, saying "Pinal County didn't bother to get their facts straight."

The trust tying the two partnerships goes back to First Queen Creek Investments' attempt to sell the 320 acres many years ago to a buyer who later defaulted, Cutler said.

Both partnerships were named in that trust because First Queen Creek Investments still owed money to

AT A GLANCE

Series of events leading up to land investigation

Here's what happened on a portion of the Queen Creek area land under investigation for illegal splitting, or subdividing, between July 1997 and June 1998:

- Queen Creek Investors split approximately 160 acres and sold four of five parcels to four different buyers. The partnership retained one.

- Two of the four buyers, Roger Barrientos and Kathy Jamieson, each split and sold their 40-acre parcels as five 8-acre parcels. One of Barrientos' buyers, Bronco Homes of Mesa, split its 8 acres into five lots — four 1.25-acre lots and one 3-acre lot.

- A third Queen Creek Investors buyer, Lamarr Farr, split 40 acres into five parcels. One of the buyers was Barrientos, who in turn split 8 acres into four lots — three at 1.25 acres and one at 4.25 acres. He sold three and retained one.

- The series of splits reduced 160 acres to 1.25-acre lots in less than a year with no subdivision plan, no dedicated roadways and no documented provision for utilities.

- Affidavits filed with Pinal County indicate substantial profits for some. In one instance, Jamieson bought 40 acres for \$139,100, or about \$3,477 an acre. She sold an 8-acre parcel for \$52,000, or \$6,500 an acre.

- Robert Treviso, who purchased 3 acres from the original package of 160 from a different seller, paid \$50,000, or \$16,666 an acre. He had his acreage on the market for \$70,000 when the building moratorium was imposed.

Queen Creek Investors, Cutler The relationship had nothing with any transaction in 1998 when the splitting occurred.

Records show both investments also had recent dealings with Gilbert real estate broker Russell Brandt, who owns Chip Realty.

Brandt brokered sales in 1997 and 1998 for both partnerships when the splitting started, a purchased some of the land in

several other Arizona
s to track down scot-

MANAG

9th day of the year. ...
word Long of Georgia
is an anesthetic during
n. ... In 1867, U.S.
William Seward
ent with Russia to
for \$7.2 million, a deal
as "Seward's
370, the 15th
he Constitution, giving
right to vote, is declared
1979, Ailey Neave, a
of the British
illed by an Irish
y bomb. ... In 1981,
an is shot and wounded
ington hotel by John W.

REAL NEWS

AL? Republican leaders
it on a two-year, \$12 billion
opes of convening a special
as today. **B1**

NATION

GES: Terry Nichols, serv-
or his federal conviction in
ity bombing, is charged
e murder in Oklahoma state

EA: A Marine navigator
obstruction and conspiracy
light of the jet that clipped a
n Italy. **A3**

But her troubles have only wors-
ened. It's been three years since her
driver's license was suspended, and
her \$80 speeding ticket grew to
\$150 after it was turned over to a
collection agency.

State and city laws allow collec-
tion charges to be added to the
fines. The collection charges pay
for such services as Lind's, or for
hiring extra municipal employees to
make collections.

Unpaid fines also are turned over
to the Arizona Department of
Revenue, and tax refunds are gar-
nished.

Also, Lind said professional skip
tracers use public records to find
people and collect the fines.

Adam Waterson, court sanctions supervisor in Gilbert, tracks down drivers
who have not paid their traffic fines.

"They think that if they move, we
won't find them," Lind said.
"They're wrong."

Thanks to computers and in-
terstate agreements, drivers whose
Arizona licenses have been pulled
can't get new ones in other states.

"Eventually, the system catches
up with them," said Kane, the
Phoenix courts spokesman.

"We get frantic calls from people
who are trying to buy a house in
another state, and they can't get a

'Little guys' suffer in land investigation

Moratorium keeps some small buyers from sitting homes

By Edythe Jensen

The Arizona Republic

All Debra and John Gordon
wanted when they bought 2 acres
and a manufactured home southeast
of Queen Creek was a chance to
escape city life and neighbors'
complaints when John worked on
cars.

What they got was a year of
waiting and worries, not knowing
whether they could move their
prefab home onto the land or why
the county was delaying permission.
"I thought it was something about
the water," Debra Gordon said,
pulling out a large envelope filled
with real-estate paperwork.

One document was a disclaimer
the pair signed at Pinal County's

request Aug. 7, acknowledging their
homestead was likely the result of
"excessive land division in violation
of Arizona State Laws" and that
they had no guaranteed legal access
to their land or utilities.

The Gordons are among the lucky
ones.
The county gave them permission
to install their home because it was
purchased before the July building
moratorium imposed when the Ari-
zona Department of Real Estate
opened an investigation into land
deals on a half square mile that
includes their property.

Some of the smaller buyers are
making payments on the land and
on manufactured homes, but they
can't put the homes on the land, said
real-estate agent Chris Lyle.

Lyle sold a number of parcels in
the area, including the Gordons'.
"It sounds like Pinal County is
trying to make the little guys pay for
roads," she said, adding that the
county's action has left many buyers

mortgage because they haven't tak-
en care of a traffic fine in
Phoenix," he said.

In addition to the tools already on
hand, lawyers for Phoenix are
developing a lawsuit collection
process for traffic fines. That also
could allow the city to win judg-
ments and place liens on driver's
homes, Kane said.

In Glendale, \$3.4 million in civil
traffic fines are unpaid and in the
hands of a collection agency. That

tempe doesn't separate recous
for traffic, parking and neigh-
borhood zoning violations.

However, Eric Halvorson, deputy
court administrator, said that out of
56,906 tickets issued in 1998, 9,415
recipients did not show up in court.

Tempe is carrying \$3.3 million in
unpaid fines on its books, he said.

Chandler Presiding Judge Mi-
chael Traynor said he couldn't guess
his court's no-show rate. But Tray-
nor said his court has 4,000
outstanding arrest warrants for all
misdemeanors — including traffic
no-shows.

Edythe Jensen can be reached at 444-7939
or at edythe.jensen@pni.com via e-mail.

stop the haphazard development
more than a year ago, but it took
months for the state to open an
investigation and give the county a
reason to stop construction.

Supervisor Sandie Smith said
Pinal County's building moratorium
is an effort to avert disasters in a
state known for its "Wild West"
property-rights philosophy.

In another rural neighborhood
near Queen Creek that sprouted
from unregulated lot splits, postal
workers recently threatened to stop
delivering mail because the informal
roads were nearly impassable.

Pinal County Planning Director
Dennis Cady said it hasn't been easy
turning people away who come to
the counter requesting building per-
mits. "But wildcat development is a
big concern to us. No one maintains
the roads ... and when it rains,
things get really nasty," he said.

Edythe Jensen can be reached at 444-7939
or at edythe.jensen@pni.com via e-mail.

EXHIBIT C



ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
CERTIFICATE OF APPROVAL TO CONSTRUCT
WATER FACILITIES

Page 1 Of 2

ADEQ File No: 20000185

System Name: Diversified Water Util

System Name: 11043

Project Owner: Diversified Water Util

Address: P.O. Box 17357, Phoenix, AZ 85011

Project Location: Payson

County : Pinal

Description: ADDITION OF 250,000 GALLON WELDED STEEL WATER STORAGE
TANK AND ASSOCIATED PIPING.

Approval to construct the above-described facilities as represented in the approved documents on file with the Arizona Department of Environmental Quality is hereby given subject to provisions 1 through 8 continued on page 2 through 2

1. Notice shall be given to the Central Regional office located in Phoenix when construction of the project begins to allow for inspection during construction per A.R.S. §49-104.B.10
2. The project owner shall retain a professional engineer as soon as possible to provide detailed construction inspections of this project. Upon completion of construction, the engineer shall fill out the Engineer's Certificate of Completion (attached), and forward it to the Regional Office. If all requirements have been completed the Regional Office will issue a Certificate of Approval of Construction.
3. Operation of a newly constructed facility shall not begin until a Certificate of Approval of Construction has been issued by the Department.

The State law, A.R.S. §49-104.B.10, requires that construction of the project must be in accordance with rules and regulations of the Arizona Department of Environmental Quality. This certificate will be void if construction has not started within one year of the approval date. Upon request a written time extension may be granted by the Department.

Reviewed by KNS

By:

Wm. H. Shafer, Jr. 4/19/2000
Wm. H. Shafer, Jr., P.E., Manager Date
Technical Engineering Unit
Water Quality Division

cc: File No : 20000185
Regional Office: Central
Owner: Diversified Water Util
County Health Department: Pinal
Engineer: Sunrise Engineering Inc.
Planning and Zoning/Az Corp. Commission
Engineering Review Database - Etr021

Exhibit B

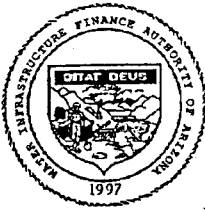
**CERTIFICATE OF APPROVAL TO CONSTRUCT
WATER FACILITIES**

ADEQ FILE NO. 20000185

PAGE 2 OF 2: PROVISIONS CONTINUED

4. All waterlines and fittings shall have NSF-PW seal.
5. All materials and products used in the drinking water system shall conform to NSF Standard 61.
6. Construction materials used in the water system shall be lead free as defined at R18-4-504 and R18-1-101.
7. Water lines shall be pressure and leakage tested in accordance with AWWA C600 Standard.
8. Water lines shall be disinfected by chlorination in accordance with AWWA C601 Standard or ADEQ Bulletin No. 8.

EXHIBIT D




WIFA



WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

JANE DEE HULL, GOVERNOR

TO: Applicants for the DRINKING WATER Revolving Fund (DWRF)

FROM: Suzanne Price, Outreach Coordinator 

DATE: October 31, 2000

SUBJECT: Funding Cycle 2000 - 2001 *FINAL* Intended Use Plan (IUP) and *FINAL* Statewide Project Priority List (PPL) for the Drinking Water Revolving Fund (DWRF)

Enclosed for your information is a copy of the *FINAL* Drinking Water Revolving Fund Intend Use Plan (IUP) and Project Priority List (PPL). The WIFA Board of Directors approved the DWRF IUP/PPL at its regular Board meeting October 10, 2000.

Note: The "fundable range" of the PPL in the IUP is shaded. This means if your project is within the fundable range and is ready for financial assistance, your loan application can be approved during Funding Cycle 2000 - 2001. WIFA will contact you to evaluate the status of your project and let you know what other requirements must be met to be eligible for financial assistance.

If your project is *not* in the fundable range, there may still be a good chance of funding this year. In April 2001 the WIFA Board will by-pass projects according to established rule and extend the fundable range. It will do so again in July 2001. Last year between 35 and 45 percent of projects were by-passed, enabling projects further down the PPL to become eligible for WIFA financial assistance.

As modifications are made to the DWRF PPL, we will provide hard copies of the revised lists and forward them to you by mail. The DWRF PPL will also be available on WIFA's new web site. Look for an announcement about www.wifa.state.az.us coming soon!

If you would like clarification, additional information, or more copies of the DWRF IUP/PPL, please feel free to contact me at our toll free number, 1-877-298-0425 or (602) 230-9770, ext. 217.

Water Infrastructure Finance Authority of Arizona, 202 East Earll Drive, Suite 480, Phoenix, AZ 85012

• Telephone: (602) 230-9770 • Fax: (602) 230-1480 • Toll-Free: (877) 298-0425

Exhibit A:

2001 Funding Cycle Priority List & Fundable Range

Arizona's Drinking Water Revolving Fund

Arizona's Drinking Water Revolving Fund
2001 Funding Cycle -- Draft Priority List & Fundable Range

16-Oct-00

Fundable Range in Gray

Rank	Applicant	Population	Project Title	Ref #	Amount Requested	Subsidy Rate Index	Funding Cycle
1	Mohawk Utility	300	Project #2	30	75,000	70%	2001
2	Naco Water Co.	939	System Rehabilitation	5	71,000	70%	2001
3	City of St. Johns	3,360	City of St. Johns Water Development Project	94	1,500,000	70%	2001
4	Mohawk Utility	2,000	Project #1	29	150,000	70%	2001
5	Water Utilities CFD	7,585	M.C.L. Remediation	24	3,200,000	70%	2001
6	Eagar	5,000	Water Storage	78	414,500	75%	2001
7	Oatman Water	300	Improvements	85	165,000	70%	2001
8	White Mountain AHA	1,250	Apache Dam	48	3,000,000	70%	2001
9	Bradshaw Water	700	Interlie Storage Tank	16	45,000	70%	2001
10	Town of Duncan	735	Water System Renewal	93	1,845,000	75%	2001
11	Water Utilities CFD	7,585	Well #6 Arsenic Reduction	26	75,000	70%	2001
12	Cave Creek Water	4,000	Arsenic Treatment	75	900,000	80%	2001
13	Flowing Wells ID	15,000	Wellmore Mainline	3	335,000	80%	2001
14	Ponderosa Park DWID	900	Westside Project	2	80,000	75%	2001
15	Francesca Water	165	Tala Way Well # 10283	17	97,000	70%	2001
16	Mt. Tipton Water	2,500	Detrital Well	10	1,200,000	70%	2001
17	East Slope Water	2,000	Storage Well #1	63	110,000	75%	2001
18	East Slope Water	2,000	Storage Well #2	64	120,000	75%	2001
19	East Slope Water	2,000	Storage Well #3	65	95,000	75%	2001
20	East Slope Water	2,000	Storage Well #4	66	120,000	75%	2001
21	Robert House	30	System Connection	7	25,000	75%	2001
22	Alpine Water System	950	Combined Upgrade	82	953,900	70%	2001
23	Nogales	22,000	Acquire Water Systems	37	800,000	75%	2001
24	Saguaro Acres CFD	150	Wellsite Improvement	49	300,000	80%	2001
25	Diversified Water Util.	456	Water Storage/Production	74	378,900	70%	2001
26	Clay Springs DWID	500	System Improvements	90	22,545	70%	2001
27	Clear Springs Utility	1,275	Clear Springs Utility Co	4	80,000	75%	2001
28	Mirabell Water Co.	150	Mirabell Water Co	1	25,000	70%	2001
29	Vernon DWID	150	Consolidation	39	75,000	70%	2001
30	Picacho Water Corp.	300	Upgrades	23	200,000	70%	2001

Arizona's Drinking Water Revolving Fund
2001 Funding Cycle -- Draft Priority List & Fundable Range

16-Oct-00

Fundable Range in Gray

Rank	Applicant	Population	Project Title	Ref #	Amount Requested	Subsidy Rate Index	Funding Cycle
31	Fredonia	1,400	Drilling East Well	68	2001 \$ 75,000	75%	2001
32	Tucson Water	650,000	Renewable Resource Facility	69	2001 \$ 3,000,000	75%	2001
33	Tucson Water	650,000	Technical Drive/Columbus	70	2001 \$ 2,000,000	75%	2001
34	Tucson Water	650,000	Raw CAP Water Pipeline	71	2001 \$ 6,603,000	75%	2001
35	Hidden Val Farmettes	40	Water Improvement	86	2001 \$ 316,500	80%	2001
36	Valley Pioneers Water	5,000	System Upgrade	15	2001 \$ 120,000	70%	2001
37	Agulla Water Services	700	New Well and Storage	38	2001 \$ 250,000	75%	2001
38	Antelope Run/Indiada	500	Storage	87	2001 \$ 110,000	80%	2001
39	Douglas	18,000	Line Replacements	18	2001 \$ 640,000	75%	2001
40	Elfride Domestic Water	600	New Well	91	2001 \$ 95,000	75%	2001
41	Beardsley Water	712	SA #1 Well Site #2 Storage	20	2001 \$ 50,000	75%	2001
42	Ponderosa Utility	1,250	Rehabilitation Well #1	8	2001 \$ 50,000	75%	2001
43	West End Water	735	Wittmann system	62	2001 \$ 890,000	80%	2001
44	Dairy Springs Water	296	Line Upgrade	84	2001 \$ 100,100	80%	2001
45	Ayra Water Co-op	5,918	Phase 1 Improvements	40	2001 \$ 1,946,750	75%	2001
46	Antelope Peak Water	50	APWA Upgrade	83	2001 \$ 44,300	75%	2001
47	Po-Bru Water	527	Upgrades	19	2001 \$ 50,000	80%	2001
48	Coconino County	655,000	Ft Tuthill	14	2001 \$ 764,173	85%	2001
49	New Life Trust DBA	48	Deflouridation & Well	21	2001 \$ 150,000	80%	2001
50	Tierra Mesa Estates	700	Well #5	67	2001 \$ 105,000	75%	2001
51	Tucson Water	650,000	Southeast D-Zone	72	2001 \$ 1,300,000	75%	2001
52	Why Utility	300	Water System Improvements	6	2001 \$ 25,000	70%	2001
53	Cedar Grove Water	420	Interconnect and Storage Project	92	2001 \$ 120,000	70%	2001
54	Nogales	22,000	Replace undersized mains	34	2001 \$ 1,000,000	75%	2001
55	Nogales	22,000	Ciardulli Place Mains	32	2001 \$ 50,000	75%	2001
56	Nogales	22,000	Meadow Hills Improve	33	2001 \$ 107,250	75%	2001
57	Peoria	101,250	24 & 16 inch 71/Thunderbird	51	2001 \$ 1,185,000	80%	2001
58	Peoria	101,250	24 & 30-inch 71/Greenway	52	2001 \$ 2,000,000	80%	2001
59	Peoria	101,250	24 & 30-inch Olive/75-91 Ave	53	2001 \$ 1,192,000	80%	2001
60	Peoria	101,250	30-inch Jomax/71-83 Ave	54	2001 \$ 2,942,000	80%	2001

Arizona's Drinking Water Revolving Fund
2001 Funding Cycle -- Draft Priority List & Fundable Range

16-Oct-00

Fundable Range in Gray

Rank	Applicant	Population	Project Title	Ref #	Amount Requested	Subsidy Rate Index	Funding Cycle
61	Peoria	101,250	24-inch 79/Peoria - Olive	55	\$ 1,219,000	80%	2001
62	Peoria	101,250	30-inch 83/Beardsley - Jonax	56	\$ 4,090,000	80%	2001
63	Water Utilities CFD	7,585	Water Loss Reduction	25	\$ 1,300,000	75%	2001
64	Holbrook	1,000	Shippley/Phillips Line	27	\$ 650,000	80%	2001
65	Holbrook	1,000	Spurlock Hill Storage Tank	28	\$ 500,000	80%	2001
66	High Chaparral Water	110	System Upgrade	12	\$ 15,000	80%	2001
67	I.M. Water Company	310	Refinance owner loan	88	\$ 10,299	75%	2001
68	Desert Hills Water	4,000	Central Ave. Tank Replace	9	\$ 300,000	75%	2001
69	Bellemont Water Co.	2,000	Upgrading water system	13	\$ 25,000	85%	2001
70	Mohave County	2,715	1-40 Water System Well Site #9 Upgrade	80	\$ 717,099	80%	2001
71	Peoria	101,250	10 M Gal Storage Reservoir	57	\$ 4,026,680	80%	2001
72	Peoria	101,250	4 M Gal Storage Reservoir	58	\$ 3,330,000	80%	2001
73	Olive Avenue HOA	50	Well and distribution Repair	22	\$ 100,000	80%	2001
74	Phoenix	1,300,000	Mains 16 North & 19 Dunlap	43	\$ 2,000,000	85%	2001
75	Phoenix	1,300,000	Mains 19 VanB Cent & Roos	44	\$ 1,500,000	85%	2001
76	Phoenix	1,300,000	Chlorine Facilities	41	\$ 6,000,000	85%	2001
77	Phoenix	1,300,000	Rehab 3 Reservoirs	46	\$ 3,600,000	85%	2001
78	Phoenix	1,300,000	SCADA - Phase 4B	45	\$ 2,775,000	85%	2001
79	Camp Verde (Town)	2,000	Water System Acquisition	11	\$ 1,000,000	70%	2001
80	Peoria	101,250	Greenway Treatment Plant	59	\$ 39,391,589	80%	2001
81	El Mirage	11,000	Phase 2-Well	81	\$ 2,500,000	75%	2001
82	Payson	13,800	Groundwater Source Dev	79	\$ 8,000,000	75%	2001
83	Cave Creek Water	4,000	System Storage	76	\$ 750,000	85%	2001
84	Cave Creek Water	4,000	CAP Reallocation	77	\$ 250,000	90%	2001
85	Phoenix	1,300,000	Drill and Equip Well #296	47	\$ 860,000	90%	2001
86	Livco Water & Sewer	1,000	System Improvements	73	\$ 25,000	70%	2002
87	Nogales	22,000	Transmission - Rederick	31	\$ 350,000	75%	2002
88	I.M. Water Company	310	Mains, Service lines & meters	89	\$ 10,000	75%	2002
89	Phoenix	1,300,000	Steel Tank Rehabilitation	42	\$ 7,500,000	85%	2002
90	Nogales	22,000	300,000 gal. Water Reservoir	35	\$ 200,000	70%	2003
91	Peoria	101,250	Pyramid Peak Plant Phase 2	61	\$ 12,000,000	75%	2004

**Arizona's Drinking Water Revolving Fund
2001 Funding Cycle -- Draft Priority List & Fundable Range**

16-Oct-00

Fundable Range in Gray				Amount		Subsidy	
Rank	Applicant	Population	Project Title	Ref #	Requested	Rate Index	Funding Cycle
92	Nogales	22,000	Nogales West Mains	36 2001	\$ 213,272	75%	2005
93	Peoria	101,250	24-inch 79/Greenway - Sports	50 2001	\$ 1,250,000	80%	2005
94	Peoria	101,250	Lake Pleasant Treatment	60 2001	\$ 20,000,000	80%	2005

EXHIBIT E

Part of Townships 2 and 3
South, Range 8 East,
Pinal County, Arizona.

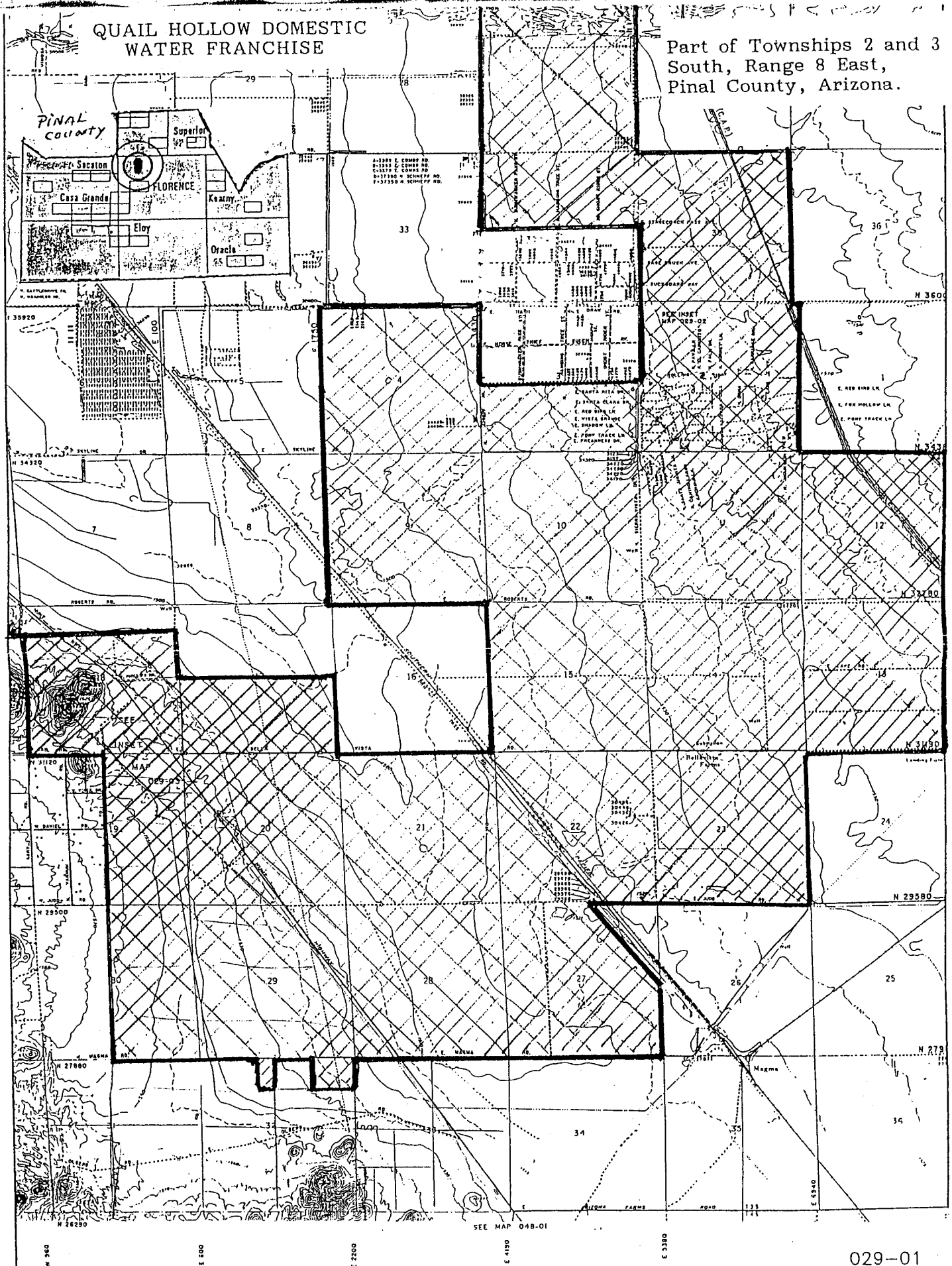


EXHIBIT F

NEARHOOD & LEPLEY

A PROFESSIONAL LIMITED LIABILITY COMPANY

STEPHEN C. LEPLEY

Direct Line: (602) 607-3343

7501 East McCormick Parkway, Suite 114N

Scottsdale, Arizona 85258-3471

Telephone (602) 998-3525

Facsimile (602) 998-0820

September 3, 1997

Our File No. 135.001

via FEDERAL EXPRESS
Priority OverNight

Leonard N. Sowers, Esq.
Deputy County Attorney
Pinal County
Administration Building No. 2
Post Office Box 887
Florence, AZ 85232

Re: *Jim Turnbull, Pinal County Treasurer v. H2O, Inc.*
CV 97-044522

Dear Mr. Sowers:

Please accept this letter as a proposal by which the referenced delinquent property tax dispute may be fairly and reasonably resolved without resort to further litigation. H2O, Inc. has a sincere interest in working with Pinal County to conclude this matter in a way that provides for payment of previous years' taxes, while recognizing and addressing this state-valued company's ability to make such payment in the context of its assets, its operating income (or loss) and its state-regulated ability to set utility customer rates by which its income is derived.

H2O, as a centrally-valued water utility company, has its rates set by the Arizona Corporation Commission. During the years for which tax payments are requested under the pending lawsuit, the Corporation Commission set rates at levels which were insufficient to permit payment of various of the company's expenses, including property taxes. While the Commission purported to engage in rate setting that took tax liabilities into consideration, it reduced other areas of company budget such as to realistically impede full payment of the company's obligations. This result is well shown by profit and loss summaries for the tax years in question. For example, for the years 1988-1992, H2O experienced operating losses (total operating revenue less total operating expenses) of \$4,609.00, \$9,471.00, \$17,283.00, \$15,896.00, and \$36,164.00, for a five-year average operating loss of \$16,685.00. During the same period, the company's net-loss averaged \$22,668.00 or 10.4% (see P&L 1988-1992, attached as Exhibit 1). Similarly, during the years 1993-1997, the company fared little better, experiencing operating losses from 1993-1996 of \$30,359.00, \$11,774.00, \$29,220.00, and \$4,154.00, for a four-year average loss of \$18,877.00. The average net loss during this same period was \$23,601.00 (see P&L 1993-1997, attached as Exhibit 2). An upturn in profitability during the first six months of 1997, reflecting operating and net income of approximately \$5,000.00 is the first light seen by this company in an otherwise dark picture. *Id.* Unfortunately, the Company's 1997 year-end projection, however, is

otherwise dark picture. *Id.* Unfortunately, the Company's 1997 year-end projection, however, is for a *net loss* of \$18,392.00, or 5.7%, which includes a Property Tax payment of \$23,698.00 (see 1997 Projected Operating Income, attached as Exhibit 3).

This substantially unprofitable history is further well-expressed by a comparison of income to expense for H2O (see 1993-1996 Income vs. Expense bar graph, attached as Exhibit 4).

The most recent Annual Report filed by H2O with the Arizona Corporation Commission supports the above data. For year ending 1996, the company's Annual Report reflects a net income loss of \$25,109.00 (see 1996 H2O Annual Report to ACC, page 9, attached as Exhibit 5). In addition to negative cash flow, the Company has deteriorating plant conditions resulting in the necessary purchase of a new \$30,000.00 pump. A 200,000 gallon storage tank is also due for replacement at a cost of \$80,000.00.

The Company experienced little growth during the years of taxes at issue. During 1996, however, H2O noted moderate growth for the first time in a decade. Meter connections increased from 439 to 463 during calendar year 1996, for an increase of 10% and from 483 to 543 during the first eight months of 1997 representing another increase of 12.4%. This growth will translate into an increased solvency and ability to meet the operating needs of the company, the costs of plant repair and replacement, and payment of past and current property taxes. The profit history of this company has effectively precluded it from paying various of its taxes and expenses. While H2O recognizes that this does not provide a legal defense to Pinal County's action for recoupment, the historical reality does suggest a basis for some relief from penalties and interest rates, which as calculated by the State now approach the amount of the taxes themselves.

Property taxes for years 1988-1996 for the subject property total \$131,355.06 (see attached Exhibit 6). H2O proposes to pay this amount, in full, to Plaintiff Pinal County. In addition, H2O proposes to pay interest on these amounts, from the dates the taxes became due in each of the tax years at issue, at an annual rate of 8.0% (effective annual rate of 8.3%). The payments would be spread over twelve years, with equal annual payments to be made in the amount \$23,344.82, commencing October 31, 1997, and concluding October 31, 2008 (see attached Exhibit 7). Interest payments, in addition to the \$131,355.00 in full tax principal payment, would total \$92,533.39. As a condition of this agreement, H2O, Inc. would be required to pay all new property taxes as they became due. The October 31 annual payment date was chosen to coincide with the conclusion of each years' primary revenue period for the company (see attached Exhibit 8).

H2O, Inc. does not wish to remain one of the numerous Pinal County water companies which have accumulated property tax delinquencies. It is hoped that payment of its taxes in full, together with interest at a reasonable rate amortized in such a way as to realistically permit repayment, will meet both Pinal County's interest in collection, and H2O's interest in continuing as a solvent, operating public utility.

September 3, 1997

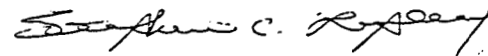
Page 3

Please contact me with any questions or comments regarding this proposal. If you find it to be acceptable, I will prepare a Settlement Agreement incorporating these terms. Upon approval, we would further stipulate to dismiss the pending lawsuit without prejudice, preserving to Pinal County the right to re-file should any of the terms of the settlement be breached. These proposals are made for purposes of settlement and compromise and are governed by Rules 408, Ariz. Rules of Evidence.

Thank you for your and Mr. Turnbull's consideration of the matter.

Very truly yours,

NEARHOOD & LEPLEY, PLC



Stephen C. Lepley

SCL:djl

cc: Mr. Donald Schnepf

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EXHIBIT G

Projects within the approved CC&N (As of Nov. 19, 1999)

NAME	DEVELOPER	PARCEL DESCRIPTION	SECTIONS	TOWNSHIP & RANGE	TOTAL NO. RESIDENCE	COMMERCIAL AREA (Ac.)	APPROX. START DATE
Johnson Ranch Phase I	Johnson Ranch L.L.C.		18,19,20,29, & 30	3S, 8E	6,600	58	1,998
Johnson Ranch Phase II	Johnson Ranch L.L.C.		29, 31,32,&33	3S, 8E	3,600	30	2,005
Magic Ranch	Kaufman & Broad		11	4S, 8E	1,000	5	2,000
Magic Ranch	Homes By Judi		11	4S, 8E	300	0	2,000
Magic Ranch	Westside Development		11	4S, 8E	425	0	2,001
Magic Ranch (Bal. of Land Owners)	Miscellaneous		2, 12	4S, 8E	4,200	30	Various
Mystic Lake Ranch	Homes By Judi		23,24, & 25	4S, 8E	4,391	79	2,000
Johnson Brothers (80 Acres)	Johnson Brothers	Parcel 1 (11/11/99)	18, 19	3S, 8E	160	0	2,010
Spike H Ranch	SHR Development	Parcel 2 (11/11/99)	27, & 28	3S, 8E	2,989	107	2,001
Sutherland Development (880 Acres)	Sutherland	Parcel 3 (11/11/99)	W1/2 30,31,35,36	3S, 7E & 3S, 8E	1,405	15	2,005
Rickie Farms	Jerry Ricki	Parcel 4 (11/11/99)	17 & 21	3S, 9E	4,200	0	2,006
Wild Horse Estates	Felix 102 (Richard Maes)	Parcel 5 (11/11/99)	SE1/4 of 7	4S, 9E	86	0	2,000
Mesquite Grove	Felix	Parcel 5 (11/11/99)	8	4S, 9E	1,273	40	2,001
White	White	Parcel 5 (11/11/99)	5	4S, 9E	320	0	2,001
Meoli	Meoli	Parcel 6 (11/11/99)	5	4S, 9E	1,280	0	2,001
Peterson	Peterson	Parcel 7 (11/11/99)	5	4S, 9E	0	0	2,001
Various (+/- 4000 acres)	Various	Parcel 8 (11/11/99)	13,15,23,24,25,26	3S, 8E	0	0	2,001
Circle G Ranches	Circle G	Parcel 9 (11/11/99)	15, & 22	3S, 7E	320	0	2,001
Maricopa County (9,720 Acres)	County	Parcel 10 (11/11/99)	SE1/4 of 7	4S, 9E	200	0	2,000
San Tan Heights	Miller Developemnt	Parcel 11 (11/11/99)	11, 12, & 13	3S, 7E	5,200	60	2,001
Cardon Estates	Cardon Development	Parcel 12 (11/11/99)	2, 3, & 11	3S, 7E	1,405	15	2,005
Supersition Views	Johnson International		28	3S, 8E	192	0	2,000
Zaharachee	Zaharachee		10	4S, 8E	400	0	2,004
SUBTOTALS					39,946	439	

Projects within the Third Amended Application (NO CONFLICTS)

NAME	DEVELOPER	SECTIONS	TOWNSHIP & RANGE	TOTAL NO. RESIDENCE	COMMERCIAL AREA (Ac.)	APPROX. START DATE
Arizona Farms	Parcel 1	1, 4, 5, 6, & 7	4S, 8E & 4S, 9E	10,200	5	2,006
Bella Vista Farms	Parcel 2	13, 14, 15, 19 & 23	3S, 8E	10,591	176	2,006
Jorde Farms	Parcel 3	2, & 3	3S, 7E	1,600	0	2,005
Whitehead	Parcel 4	31	3S, 8E	640	0	2,005
Skyline	Parcel 5	7, & 12	3S, 8E	785	0	2,004
Morning Sun Farms	Parcel 6	1	3S, 7E	1,195	5	2,001
Shelton	Parcel 7	8	3S, 9E	320	0	2,010
Various owners within Section 28	Parcel 8	28	3S, 9E	320	0	2,010
Farley Farms	Parcel 9	14, 22, 23, 27, & 34	4S, 8E	4,200	0	2,002
State of Arizona	Parcel 10	10, 26, 15, 14, 23, 35	4S, 8E	7,360	0	2,002
Circle Cross Ranch (West of R.R.)	Parcel 11	6, & 31	2S, 8E & 3S, 8E	2,521	80	2,002
Jorde/Morning Sun Farms	Parcel 12	1, 12	3S, 7E	0	0	2,001
BLM Property	Parcel 13	E1/2 of 13	4S, 8E	1,280	0	2,001
BLM Property	Parcel 13	W1/2 of 15	4S, 8E	1,280	0	2,001
BLM Property	Parcel 13	SE1/4 of 12	4S, 8E	640	0	2,001
Future Development Sections 23 & 26	Parcel 10	23, & 26	4S, 8E	3,000	60	2,003
* Various (Sewer Only)	Parcel 19 (Sewer Only)	27	2S, 8E	1,000	0	2,001
* Pecan Ranch (Sewer Only)	Parcel 20 (Sewer Only)	20	2S, 8E	0	0	2,000
SUBTOTALS				46,932	326	

Projects with potential conflict.

NAME	DEVELOPER	SECTIONS	TOWNSHIP & RANGE	TOTAL NO. RESIDENCE	COMMERCIAL AREA (Ac.)	APPROX. START DATE
* Circle Cross Ranch (East of R.R.)	El Dorado Holdings	6, & 31	2S, 8E & 3S, 8E	2,000	0	2,002
* Johnson Farms (Within Section 5)	Community Southwest	5	3S, 8E	700	0	2,003
* Johnson Farms Section 32	Community Southwest	32	2S, 8E	75	0	2,003
* Combs School	School District/Pinal County	NW1/4 of 32	2S, 8E	0	10	2,001
* Pecan Estates	Mike Johnston/Harold Christ	29	2S, 8E	1,920	0	2,000
* The Home Place	Jim Wales	28	2S, 8E	2,174	92	2,004
* Ware Farms	Vistoso Partners	33	2S, 8E	1,842	34	2,001
* 240 Acres of Schnepf Rd.	Vistoso Partners	33	2S, 8E	720	0	2,005
* Various	Various	33	2S, 8E	120	0	2,001
TOTALS				9,551	136	

* Within H2O conflict area

GRAND TOTALS

96,429

901

EXHIBIT H

BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY :

In the matter of:)	
)	
Johnson Utilities, L.L.C.)	CONSENT ORDER
5230 E. Shea Boulevard)	
Scottsdale, Arizona 85254)	DOCKET NO. <u>P-105-99</u>
)	
)	

TO: Johnson Utilities, L.L.C. (Johnson Utilities), as owner and operator of the facility known as Johnson Ranch Main Wastewater Collection, Treatment and Disposal System located 3 miles south of Queen Creek within the northern portion of Pinal County, Arizona.

Johnson Utilities acknowledges that no promise of any kind or nature was made to induce it to enter into this Consent Order and that it has done so voluntarily.

The undersigned, representative, George H. Johnson, Manager of Johnson Utilities, certifies that he is fully authorized to execute this Consent Order on behalf of Johnson Utilities and to legally bind Johnson Utilities to this Consent Order.

Johnson Utilities admits the jurisdiction of the Director (Director) of the Arizona Department of Environmental Quality (ADEQ).

Johnson Utilities consents to the terms and entry of this Consent Order and agrees not to contest the validity or terms of this Consent Order in any subsequent proceeding.

THEREFORE, IT IS HEREBY ORDERED as follows:

I. JURISDICTION

A. The Director of ADEQ has jurisdiction over the subject matter of the action and is authorized to issue this order pursuant to A.R.S. §49-261.A.

B. The Director of ADEQ has personal jurisdiction over Johnson Utilities and George H. Johnson.

II. FINDINGS OF FACT

A. Johnson Utilities is the owner and operator of the Johnson Ranch main wastewater collection, treatment and distribution System, serving the Johnson Ranch Master Planned Community located 3 miles south of Queen Creek within the northern section of Pinal County, Arizona. George Johnson is the Manager of Johnson Utilities.

B. Approvals to Construct (ATC) for the following projects have been issued to Johnson Utilities on the dates indicated:

- a. The Trunk Sewer line (980270) was issued on March 19, 1998.
- b. Subdivision No. 2 (980011) was issued on May 26, 1998.
- c. The Hunt Highway and New Magma Channel (980215) was issued on June 15, 1998.
- d. Subdivision No. 3A (980051) was issued on July 1, 1998.
- e. Subdivision No. 3 B (980443) was issued on September 23, 1998.
- f. The Johnson Ranch Main Wastewater Treatment Plant (980174) for Johnson Subdivisions was issued on October 8, 1998.

C. Johnson Utilities failed to construct the Johnson Ranch Main Wastewater Collection, Treatment, and Disposal System in accordance with plans approved by ADEQ.

D. Johnson Utilities has obtained Aquifer Protection Permit No. P103081 and Reuse Permit No. 103081 for the Johnson Ranch Wastewater Collection System and Wastewater Treatment Plant (WWTP).

III. CONCLUSIONS OF LAW

A. The Johnson Ranch Wastewater Collection System and WWTP are facilities within the meaning of Arizona Revised Statute (A.R.S.) § 49-201.16.

B. The Johnson Ranch Main Wastewater Collection System and Johnson Ranch Main WWTP, and their owner and operator, Johnson Utilities, are each a "person" within the meaning of A.R.S. § 49-201.24 and Arizona Administrative Code (A.A.C.) R18-9-802.F.

C. Johnson Utilities failed to construct the main Wastewater Collection, Treatment and Disposal systems in accordance with plans approved by ADEQ in violation of A.A.C. R18-9-804.G.

IV. COMPLIANCE SCHEDULE

THE DIRECTOR ORDERS and Johnson Utilities agrees that Johnson Utilities shall take the following compliance actions immediately or as expressly set forth in the compliance schedule below:

A. INTERIM WASTEWATER SYSTEM :

1. No later than May 15, 1999, Johnson Utilities shall submit for approval by ADEQ, an engineering report certified by an Arizona registered engineer, describing the method by which Johnson Utilities will provide an interim sewage conveyance, treatment, and disposal System that will adequately serve seventy (70) homes during the interim period prior to completing the construction of the Johnson Ranch Main WWTP. This proposed System may utilize those portions of the sewer conveyance and treatment System that have already received an Approval to Construct (ATC) from ADEQ. This engineering report shall include, at a minimum, the following:

- a. A schedule indicating when the proposed interim wastewater System will be implemented once approved by ADEQ, and the proposed maximum duration that the interim System will be operated.
- b. An engineering design report and design drawings that describe the entire proposed interim wastewater conveyance, treatment, and disposal System.
- c. A description of the method by which the proposed interim wastewater System shall be monitored, operated, and maintained. This shall include the frequency and nature of System monitoring, and the frequency in which the wastewater shall be vaulted and hauled.
- d. A map and written description of the location and the address of the seventy (70) homes that will be served by the interim System, the projected maximum daily flows associated with those connections, and

the approximate dates on which Johnson Utilities proposes to connect each of the seventy (70) homes.

2. Within 30 days of approval by ADEQ of the proposed interim wastewater System, submitted pursuant to Section IV.A.1., Johnson Utilities shall submit the following information for final approval by ADEQ: (a) Construction as-built plans; (b) Testing data; (c) An Arizona Registered Engineer's Certificate of Completion; and (d) Associated fees (as per A.A.C. R18-9-123 and R18-9-805) for any and all aspects of the interim System. No portion of the interim System may be utilized prior to receiving written approval by ADEQ. Nothing approved for the interim operation of this facility shall be considered as a permanent Approval of Construction for any facility.

B. INTERIM HOUSING ADDITIONS : A maximum of seventy (70) houses for Johnson Ranch Subdivisions shall be allowed to connect to the interim wastewater System approved by ADEQ.

C. VAULT AND HAUL RECORDS : Receipts for the vault and haul service, including the date, time, and volumes hauled to each location shall be recorded and submitted with the monthly reports required by Section VI.A of this Consent Order. All vault and haul operations shall be conducted utilizing trucks properly permitted such purpose by Pinal county and ADEQ.

D. COMPLETION OF CONSTRUCTION OF JOHNSON RANCH MAIN WWTP:

1. No later than October 31, 1999, Johnson Utilities shall complete construction of the Johnson Ranch Main WWTP and sewer conveyance System from subdivision unit no.s 2 and 3 to the main WWTP.

2. No later than November 30, 1999, Johnson Utilities shall submit a complete application for an AOC, and associated fees pursuant to A.A.C. R18-14-101 et seq, for the Johnson Ranch Main WWTP and sewer conveyance System from subdivision unit no.2 and 3. The application for an AOC for this project shall include but not be limited to as-builts, construction testing data and an Arizona Engineers Certificate of Completion.

E. APPROVAL TO CONSTRUCT ADDITIONAL CAPACITY TO THE JOHNSON RANCH MAIN WWTP. By July 10, 1999, Johnson Utilities shall submit an application for an Approval to Construct additional capacity for the Johnson Ranch Main WWTP. The engineering calculations shall indicate the Johnson Ranch planned housing construction for the next three years and a schedule indicating when construction of the WWTP expansion will be initiated and completed once approved by ADEQ to ensure adequate wastewater treatment and disposal capacity to serve the subdivisions over the next three years.

F. UNAUTHORIZED RELEASES: Any unauthorized release or discharge shall be reported to ADEQ within 24 hours of discovering the violation. No later than five (5) days after discovering the violation, a written report shall be submitted to ADEQ describing the date and time of occurrence, amount released, cause of the event, impact to public health and/or the environment, any actions taken to mitigate impacts to public health and/or the environment, and any remedial activities that have been or will be conducted.

V. STIPULATED PENALTIES

A. If Johnson Ranch Utilities, L.L.C. fails to comply with any requirements of the Compliance Schedule described in Section IV of this Consent Order, Johnson Utilities shall pay a stipulated penalty pursuant to the schedule below:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day of Violation</u>
1st to 30th day	\$ 500/day per violation
31st to 60th day	\$1000/day per violation
After 60 days	\$1500/day per violation

Payments shall be made pursuant to the provisions described in Section V.D. below.

B. Any unauthorized discharges or spills of wastewater subjects Johnson Utilities to a stipulated penalty of \$5000 per day.

C. Except as otherwise provided herein, stipulated penalties shall begin to accrue on the day that performance is due or that a violation of the Compliance Schedule occurs and shall continue to accrue until correction of the act of noncompliance is completed. Neither issuance by ADEQ nor receipt by Johnson Utilities of a notice of noncompliance with the terms and conditions of this Consent Order are conditions precedent to the accrual of stipulated penalties.

D. Stipulated penalty payments shall be made within 14 calendar days following written demand by ADEQ. Payment to ADEQ shall be made by certified check payable to:

Mike Clark, Chief Financial Officer
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012
Reference: Consent Order Docket No.

E. Johnson Utilities shall pay interest on any stipulated penalty not paid within thirty (30) days of the due date at the rate established pursuant to A.R.S. §44-1201.

F. The stipulated penalties herein shall be in addition to other remedies or sanctions available to ADEQ by reason of any failure by Johnson Utilities to comply with the requirements of this Consent Order. The payment of stipulated penalties shall not relieve Johnson Utilities from specific compliance with the terms and conditions of this Consent Order or federal or state laws, nor limit the authority of the state to require compliance with the Consent Order or state law.

G. Performance deadlines ending on a weekend or legal holiday date shall be considered met if delivered on the first work date following the prescribed date.

VI. REPORTING

A. THE DIRECTOR FURTHER ORDERS, and Johnson Utilities agrees that Johnson Utilities shall submit a written status report to ADEQ every thirty (30) calendar days beginning thirty (30) days from receipt of this Consent Order, until full compliance with this Consent Order is achieved. The written status reports shall describe through narrative form and in a subdivision map, the address of each home allowed connection to the ADEQ approved interim wastewater System, what measures have been taken to correct the violations described in this Consent Order, the results of monitoring required by Section IV.C, and shall certify when compliance with the requirements of Section IV of this Consent Order are achieved. Each report shall be accompanied by evidence of compliance including, as

appropriate, submittal of documents, photographs or copies of any other supporting information which ADEQ deems necessary.

B. ADEQ will review the status reports and relay its findings in writing to Johnson Utilities. Johnson Utilities shall incorporate all required modifications, changes or other alterations, as requested by ADEQ, within a reasonable time specified by ADEQ.

C. All documents, materials, plans and other items submitted to ADEQ in accordance with this Consent Order shall be transmitted to the following address:

Arizona Department of Environmental Quality
Water Quality Division
Water Quality Enforcement Unit, 5th Floor
3033 North Central Avenue
Phoenix, Arizona 85012
Attention: Pat Finton
Telephone: (602) 207-4693

D. All documents, materials, plans and other items submitted to ADEQ in accordance with this Consent Order shall be deemed submitted when postmarked, return receipt requested, or accepted for delivery by a commercial delivery service, or hand delivered.

VII. GENERAL PROVISIONS

A. This Consent Order does not encompass issues regarding violations, releases, contamination, sources, operations, facilities or processes not expressly covered by the terms of this Consent Order and is without prejudice to the rights of the State of Arizona arising under any Federal or Arizona environmental statutes, rules or regulations with regard to such issues.

B. Nothing in this Consent Order shall constitute a permit of any kind, or modification of any permit of any kind, or an agreement to issue a permit of any kind under federal, state or local law, or relieve Johnson Utilities in any manner of its obligation to apply for, obtain, and comply with all applicable permits. Nothing in this Consent Order shall in any way alter, modify or revoke federal, state or local law, or relieve Johnson Utilities in any manner of its obligations to comply with such laws. Compliance with the terms of this Consent Order shall be no defense to any action to enforce any such permits laws.

C. Johnson Utilities shall perform all requirements of this Consent Order according to the time limits set forth, unless performance is prevented or delayed by events which constitute a *force majeure*. *Force majeure*, for the purpose of this Consent Order, is defined as any event, arising from causes beyond the control of Johnson Utilities, which delays or prevents performance of any obligation under this Consent Order. The financial inability of Johnson Utilities to comply with the terms of this Consent Order shall not constitute a *force majeure*.

D. In the event of a *force majeure*, the time for performance of the activity affected by the *force majeure* shall be extended for a period no longer than the delay caused by the *force majeure*. The time for performance of any activity dependent on the delayed activity shall be similarly extended. In the event of a *force majeure*, Johnson Utilities shall notify ADEQ in writing within ten (10) calendar days after its occurrence. The written notice provided to ADEQ shall describe in detail the event, the anticipated delay, the measures taken and to be taken by Johnson Utilities to prevent or minimize the delay, and the timetable under which those measures will be implemented. Johnson Utilities shall take all reasonable

measures to prevent or minimize any delay caused by the *force majeure*. Failure of Johnson Utilities to comply with any requirement of this paragraph for a particular event shall constitute a waiver of its right to request an extension of time to fulfill any obligation under this Consent Order relating to that event.

E. ADEQ shall have the right: to disapprove work performed by Johnson Utilities that fails to comply with this Consent Order; to take enforcement action for any and all violations of this Consent Order; and to take action for any and all violations of State or Federal environmental laws occurring after the entry of this Consent Order.

F. Failure to comply with this Consent Order may subject Johnson Utilities to judicial action and civil penalties.

G. ADEQ may at any time, upon presentation of credentials to authorized personnel on duty, enter upon the premises of the Facility for the purpose of observing and monitoring compliance with the provisions of this Consent Order. This right of entry shall be in addition to, and not in limitation of or substitution for, ADEQ's rights under applicable law.

H. The provisions of this Consent Order are severable. If any provision of this Consent Order is declared by a court of law to be invalid or unenforceable, all other provisions of this Consent Order shall remain in full force and effect.

I. This Consent Order is based solely upon currently available information. If additional information is discovered which indicates that the actions taken under this Consent Order are or will be inadequate to protect the public health, welfare, or the environment, or to conform with applicable federal or state laws, ADEQ shall have the right to require further action.

J. Any modifications of this Consent Order shall be in writing and approved by Johnson Utilities and the Director, however, minor alterations in times for performance of actions provided herein that do not constitute a force majeure may be orally requested by Johnson Utilities and consented to by ADEQ.

K. The effective date of this Consent Order shall be the date this Consent Order is signed by ADEQ.

VIII. TERMINATION

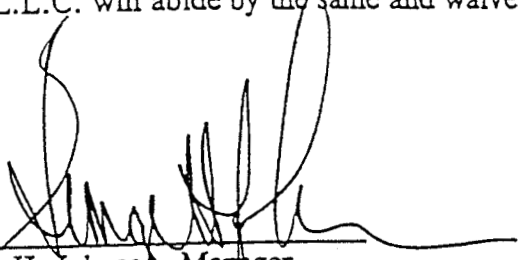
This Consent Order may be terminated when the following actions have been completed:

1. Approvals of Construction have been issued for the Johnson Ranch wastewater facilities listed in Section II.B of this Order.
2. All the requirements of Sections IV (Compliance Schedule) and VI (Reporting) of this Consent Order have been fulfilled.
3. Johnson Utilities has paid all penalties due under this Consent Order if applicable.
4. A letter indicating completion of the above items has been issued by ADEQ.

CONSENT TO ORDER

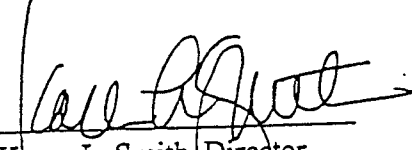
The undersigned, on behalf of the Johnson Utilities, L.L.C., hereby acknowledges that Johnson Utilities, L.L.C. was represented by counsel and, having read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its issuance by the Director, agrees that the Johnson Utilities, L.L.C. will abide by the same and waives any right to appeal.

DATED this 10 day of May, 1999



George H. Johnson, Manager
Johnson Utilities, L.L.C.

ISSUED this 12th day of May, 1999.



Karen L. Smith, Director
Water Quality Division
Arizona Department of Environmental Quality

ORIGINAL of the foregoing Consent Order was filed this 12 day of May, 1999, with:

Lavonne Watkins, Case Manager
Office of Administrative Council
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, AZ 85012

DUPLICATE ORIGINAL of the foregoing Consent Order was sent by Certified Mail, Return Receipt Requested this 13 day of May, 1999, or hand delivered to:

George H. Johnson, Owner
Johnson Utilities
5230 E. Shea Boulevard
Scottsdale, Arizona 85254

COPIES of the foregoing Consent Order were sent through regular/inter/intradepartmental mail to the following:

Robert D. Anderson
Storey & Pieroni
3030 E. Camelback Road, Suite 265
Phoenix, Arizona 85016

Patrick J. Cunningham, Esq.
Chief Counsel
Environmental Enforcement Section
Office of the Attorney General
1275 West Washington Street
Phoenix, Arizona 85007

Reg Gloss, Environmental Health Director
Pinal County Health Department
188 South Main
Coolidge, Arizona 85228

M. Reza Azizi, Manager
Water Quality Enforcement Unit
Water Quality Division
3033 North Central Avenue
Phoenix, Arizona 85012

EXHIBIT I

OCT 13 1999

WATER QUALITY ENFORCEMENT UNIT

BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

10/8/99

In the matter of:)	
)	
Johnson Utilities, L.L.C.)	AMENDMENT TO CONSENT ORDER
5230 E. Shea Boulevard)	
Scottsdale, Arizona 85254)	DOCKET NO. P-105-99
)	
<u>PINAL COUNTY</u>)	

WHEREAS, Respondents, Johnson Utilities, L.L.C., (Johnson Utilities) has entered into Consent Order Docket No. P-105099 with the Arizona Department of Environmental Quality (ADEQ):

WHEREAS, The parties agree to amend Part IV of the Compliance Schedule as shown herein in accordance with Part VII.J of Consent Order Docket No. P-105099;

WHEREAS, ADEQ and Johnson Utilities desire to enter into this Amendment to Part IV of the order reflecting the status of Johnson Utilities's Wastewater Treatment Facilities and the Johnson Utilities's compliance with the remaining obligations described in the Order;

WHEREAS, all other parts of Consent Order Docket No. P-105-99 shall remain in effect pursuant to Part VII.H;

WHEREAS, the effective date of this Amendment shall be the date the Director signs the Amendment;

THE DIRECTOR ORDERS and Johnson Utilities agrees that Johnson Utilities shall take the following compliance actions immediately or as expressly set forth below:

AMENDED PART IV

COMPLIANCE SCHEDULE

A. INTERIM WASTEWATER SYSTEM :

1. Within five (5) working days of the date of this amendment Johnson Utilities shall submit for ADEQ approval, a revised operations and maintenance plan certified by an Arizona registered engineer, describing the method by which Johnson Utilities will provide an interim sewage conveyance, treatment, and disposal system that will adequately serve one hundred fifty (150) homes during the interim period prior to completing the construction of the Johnson Ranch Main WWTP on or before November 30, 1999. This proposed system may utilize those portions of the sewer conveyance and treatment system that have already received an Approval to Construct (ATC) from ADEQ. This operations and maintenance report shall include, at a minimum, a schedule and plan of operations indicating how the proposed interim wastewater system will be implemented as approved by ADEQ, and the proposed maximum duration that the interim system will be operated as approved by ADEQ, which is until November 30, 1999. The revised O&M plan shall include a list of each sewer line plug utilized in this interim system.

2. Each sewer line plug used in this interim system shall be inspected daily, and the result of that inspection and condition of these plugs shall be reported monthly, until an Approval of Construction is issued in writing by ADEQ.

3. A set of engineering plans and specifications and a design report that describe the entire proposed interim wastewater conveyance, treatment, and disposal system that has been approved by ADEQ. Any amendments or updates needed to make allowances for

the additional eighty (80) connections, as described in the revised O&M Plan, shall be submitted within five working days of the effective date of this Amendment.

4. A description of the method by which the proposed interim wastewater system shall be monitored, operated, and maintained has been approved by ADEQ. This includes the frequency and nature of system monitoring, and the frequency in which the wastewater shall be vaulted and hauled. From the effective date of this amendment, each time the Vault is to be pumped, a beginning sewage depth measurement, in relation to the 1512.00 foot mark on the wall, shall be taken and reported for each hauling with the Consent Order monthly reports. At no time shall the inflow to the sewer vault exceed the 1512.00 foot mark on the wall approved by ADEQ.

5. A map and written description of the location and the address of the additional eighty (80) homes that will be served by the interim system, the projected maximum daily flows associated with those connections, and the approximate dates on which Johnson Utilities proposes to connect each of the additional eighty (80) homes, shall be submitted to ADEQ within five (5) working days of the effective date of this amendment. Each month's additions and changes shall be reported in each monthly report. These reports shall include any engineering calculations or monitoring results necessary to indicate that the system is operating correctly and within the limits of this Order and its Amendment.

6. Pursuant to Section IV.A.1., Johnson Utilities has submitted the following information for final interim system approval by ADEQ: (a) Construction as-built plans; (b) Testing data; (c) An Arizona Registered Engineer's Certificate of Completion; and

(d) Associated fees (as per A.A.C. R18-9-123 and R18-9-805) for any and all aspects of the interim system. No portion of the interim system may be utilized prior to receiving written approval by ADEQ. Nothing approved for the interim operation of this facility shall be considered as a permanent Approval of Construction for any facility. Any additions or corrections to the previously submitted and approved documents shall be submitted for review and approval within five (5) days of the effective date of this Amendment.

B. INTERIM HOUSING ADDITIONS : A maximum of one hundred fifty (150) homes for Johnson Ranch Subdivisions shall be allowed to connect to the interim wastewater system previously approved by ADEQ.

C. VAULT AND HAUL RECORDS : Copies of receipts for the vault and haul service, including the date, time, measurement of the pre-pumping sewage depth in the vault, and volumes hauled to each location, with verification from the City of Florence, shall be recorded and submitted with the monthly reports required by Section VI.A of this Consent Order.

D. COMPLETION OF CONSTRUCTION OF JOHNSON RANCH MAIN WWTP:

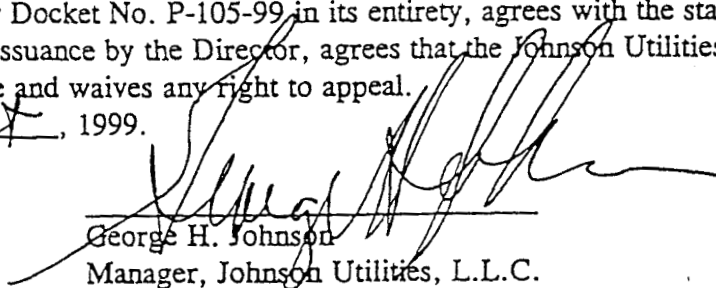
1. No later than October 31, 1999, Johnson Utilities shall complete construction of the Johnson Ranch Main WWTP and sewer conveyance system from subdivision unit no.s 2 and 3 to the main WWTP.
2. No later than November 30, 1999, Johnson Utilities shall submit an application for an AOC, and associated fees for the Johnson Ranch Main WWTP and sewer conveyance system from subdivision unit no.2 and 3. The application for an AOC for

this project shall include but not be limited to as-builts, construction testing data and an Engineers Certificate of Completion by an Arizona Registered Engineer.

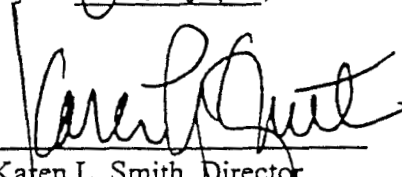
E. **UNAUTHORIZED RELEASES:** Any unauthorized exceedance of the grit chamber 1512.00 foot level, release or discharge shall be reported to ADEQ within five (5) working days after discovering the violation. The written report shall describe the date and time of occurrence, amount released or exceeded, cause of the event, impact to public health and/or the environment, any actions taken to mitigate impacts to public health and/or the environment, and any remedial activities that have been or will be conducted.

CONSENT TO ORDER

The undersigned, on behalf of the Johnson Utilities, L.L.C., hereby acknowledges that Johnson Utilities, L.L.C. was represented by counsel and, having read the foregoing Amendment to Consent Order Docket No. P-105-99 in its entirety, agrees with the statements made therein, consents to its issuance by the Director, agrees that the Johnson Utilities, L.L.C. will abide by the same and waives any right to appeal.
DATED this 7 day of Oct, 1999.


George H. Johnson
Manager, Johnson Utilities, L.L.C.

ISSUED this 8 day of October, 1999.


Karen L. Smith, Director
Water Quality Division
Arizona Department of Environmental Quality

ORIGINAL of the foregoing Consent Order was filed this 8th day of October, 1999, with:

Lavonne Watkins, Case Manager
Office of Administrative Council
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, AZ 85012

ORIGINALS of the foregoing Consent Order was sent by Certified Mail, Return Receipt
Requested this 8th day of October, 1999, to:

George H. Johnson, Owner
Johnson Utilities
5230 E. Shea Boulevard
Scottsdale, Arizona 85254

Robert D. Anderson
Storey & Pieroni
3030 E. Camelback Road, Suite 265
Phoenix, Arizona 85016

COPIES of the foregoing Consent Order were sent through regular/inter/intradepartmental
mail to the following:

Dan Meer, Chief
CWA Compliance Office (WTR-7)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

Patrick J. Cunningham, Esq.
Chief Counsel
Environmental Enforcement Section
Office of the Attorney General
1275 West Washington Street
Phoenix, Arizona 85007

Reg Gloss, Environmental Health Director
Pinal County Health Department
188 South Main
Coolidge, Arizona 85228

M. Reza Azizi, Manager
Water Quality Compliance Unit
Water Quality Division
3033 North Central Avenue
Phoenix, Arizona 85012

EXHIBIT J

Johnson Utilities, L.L.C.
Statement of Revenue Collected and Expenses Paid
Modified Accrual Basis

	Jan - Dec '99
Income	
Water Revenue	
Water Sales - Residential	44,944.52
Water Sales - Commercial	125,461.18
Sales Tax - Water	(2,540.84)
Other Income - Water	8,540.00
Total Water Revenue	176,404.86
Sewer Revenue	
Sewer Fees	12,474.00
Sales Tax - Sewer	(704.99)
Other Income - Sewer	115,500.00
Total Sewer Revenue	127,259.01
Total Income	303,673.87
Expense	
Depreciation Expense - Water	81,169.39
Depreciation Expense - Sewer	90,985.88
Property Taxes	2,986.24
Purchased Water	49,830.00
Purchased Power	63,053.93
Materials & Supplies	1,766.26
Repairs & Maintenance	1,278.51
Management Services - Water	11,287.98
Outside Services	2,713.52
Customer Billings	4,910.00
Accounting Fees	11,042.10
Water Testing	4,630.22
Insurance Expense	11,463.26
Miscellaneous	797.15
Licenses & Fees	5,558.00
Bank Charges	16.79
Telephone	688.44
Sludge Removal Expense	148,509.12
Sewage Treatment & Testing	240.00
Management Services - Sewer	5,548.98
Total Expense	498,480.77
Net Income	(194,806.90)

Johnson Utilities, L.L.C.
Statement of Assets, Liabilities and Equity
Modified Accrual Basis

	Dec 31, '99
ASSETS	
Current Assets	
Checking/Savings	
Cash NB - 0050005715	23,027.82
Cash NB - 0060019790	3,319.86
Cash NB - 0060033795	100.00
Total Checking/Savings	26,447.68
Other Current Assets	
Accounts Receivable	20,271.86
A/R - Sunbelt	16,011.59
Total Other Current Assets	36,283.45
Total Current Assets	62,731.13
Fixed Assets	
Utility Plant - Water	
Land & Land Rights	244,400.00
Structures & Improvements	102,374.41
Wells & Springs	324,354.96
Pumping Equipment	375,049.00
T&D Mains	2,819,739.21
Services	155,100.00
Meters & Meter Installation	32,940.89
Hydrants	60,225.00
Tools & Equipment	16,230.00
Total Utility Plant - Water	4,130,413.47
Accum. Depreciation - Water	(119,222.39)
Utility Plant - Sewer	
Land & Land Rights	375,000.00
Structures & Improvements	196,348.00
Services	25,752.00
Wastewater Meters	7,009.32
Pumping Equipment	11,660.00
Reuse T&D	3,771,465.33
Total Utility Plant - Sewer	4,887,435.15
Accum. Depreciation - Sewer	(100,310.88)
Total Fixed Assets	9,798,315.35
TOTAL ASSETS	8,861,046.48
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Accounts Payable	521,967.57
Security Deposits	1,900.00
Sales Tax Payable	782.32
Total Other Current Liabilities	524,649.89
Total Current Liabilities	524,649.89
Long Term Liabilities	
AIAC - Water	1,956,930.00
AIAC - Sewer	968,955.00
Refundable Meter Deposits	120,190.00
Total Long Term Liabilities	2,946,075.00
Total Liabilities	3,470,724.89

JU 01569

Johnson Utilities, L.L.C.
Statement of Assets, Liabilities and Equity
Modified Accrual Basis

	Dec 31, '99
Equity	
Contr. in Aid of Construction	
CIAC - Water	65,225.00
Hook-Up Fees- Water	877,925.00
Hook-Up Fees - Sewer	338,000.00
Accum. Amort. CIAC - Water	(33,893.00)
Accum. Amort. CIAC - Sewer	(11,075.00)
Total Contr. in Aid of Construction	1,236,182.00
Paid in Capital	4,422,028.28
Member's Capital	(73,081.79)
Net Income	(194,806.90)
Total Equity	5,390,321.59
TOTAL LIABILITIES & EQUITY	8,861,046.48

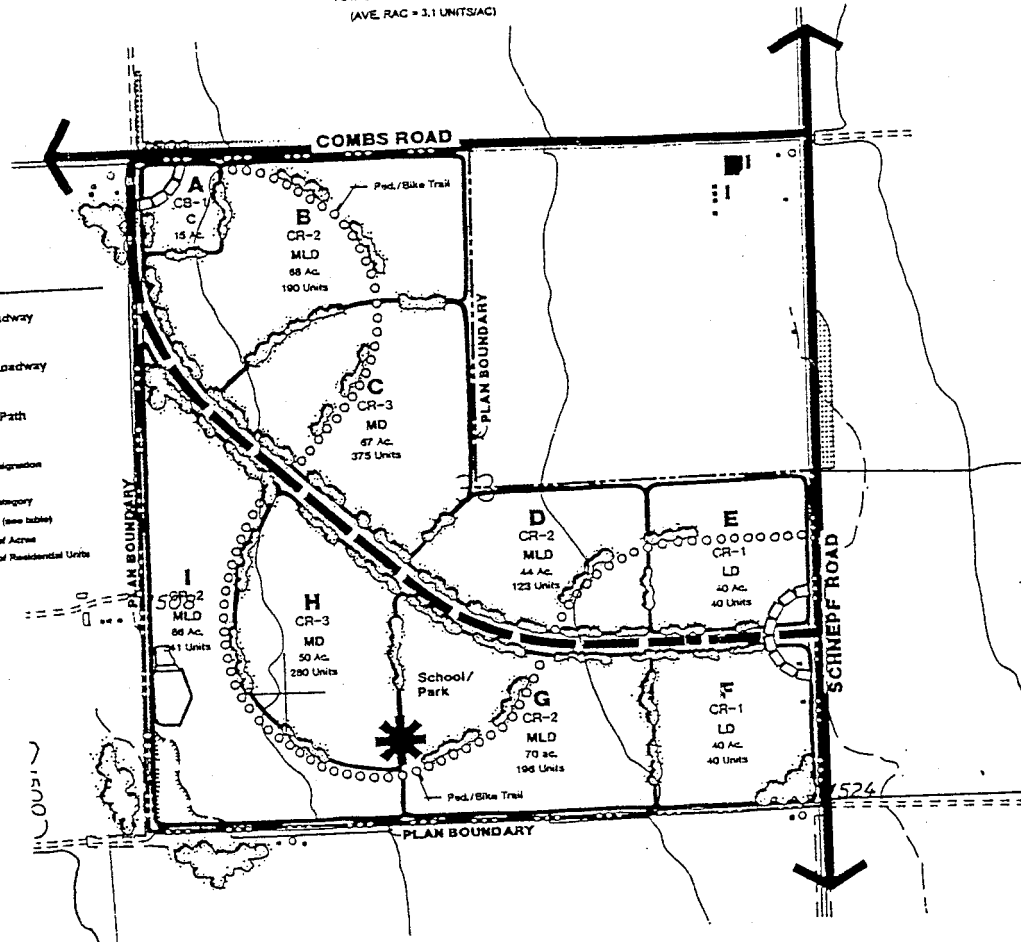
EXHIBIT K

LAND USE TABLE

LAND USE	LAND USE DESIGNATION	LOT SIZE (SF)	ZONING	RAC	TARGET UNITS	ACREAGE	UNITS
LD	LOW DENSITY RES.	36,000 SF	CR-1	0.5 - 1.5	1.0	80	80
MLD	MED. LOW DENSITY RES.	10,000 SF	CR-2	1.6 - 4.0	2.8	268	750
MD	MED. DENSITY RES.	7,000 SF	CR-3	4.1 - 7.0	5.8	117	655
C	COMMERCIAL		CS-1			15	
TOTALS:						480	1,485
(AVE. RAC = 3.1 UNITS/AC)							

LEGEND

- Existing Roadway
- Proposed Roadway
- Pedestrian Path
- Parcel
- Parcel Designation
- Zoning Category
- Land Use (see table)
- Number of Acres
- Number of Residential Units
- School



The WLB Group

Prepared by Planning & Marketing
Landscape Architecture & Urban Design
Division, 1000 N. 1st Street, Suite 100
Lincoln, NE 68502-1000

Rev. 10/15/94
WLB JOB #199027-A-001

Exhibit II-1

Land Use Plan Ware Farms

11/6/98

EXHIBIT L

EXHIBIT M

**MASTER PLANNED COMMUNITIES AND REZONES APPROVED BY
BOARD OF SUPERVISORS
SAN TAN VALLEY AREA
1998 - PRESENT**

<u>CASE NO.</u>	<u>PROJECT</u>	<u>ACRES</u>	<u>DU</u>	<u>BOS APPROVAL</u>
PZ-031-97 PZ-PD-031-97 PZ-001-99 (Amendment) PZ-PD-001-99	Johnson Ranch (WLB)	2,014	6,600	3/1/99
PZ-007-98 PZ-PD-007-98	Magic Ranch (WLB)	1,509	6,235	4/22/98 5/20/98
PZ-031-98	Dick Maes (WLB)	148	105	8/17/98
PZ-032-98 PZ-PD-032-98	Mystic Lake Ranch (WLB)	1,240	4,391	7/29/98
PZ-037-98	WLB	31	47	9/16/98
PZ-038-98 PZ-PD-038-98	Dobson Farms (WLB)	1,775	6,671	11/4/98
PZ-039-99 PZ-PD-039-99	Arizona Farms (WLB)	2,848	10,290	11/4/98
PZ-040-98 PZ-PD-040-98	Bella Vista Farms (WLB)	3,583	12,818	11/4/98
PZ-041-98 PZ-PD-041-98	Ware Farms (WLB)	480	1,485	11/18/98
PZ-002-99 PZ-PD-002-99	Mesquite Grove (WLB)	640	1,319	4/14/99
PZ-003-99 PZ-PD-003-99	Spike H Ranch (Copper Basin)	851	3,359	5/19/99
PZ-005-99 PZ-PD-005-99	Home Place (WLB)	640	2,174	5/19/99
PZ-015-99 PZ-PD-015-99	Pecan Ranch (Cornoyer Hedrick)	880	3,180	9/22/99

<u>CASE NO.</u>	<u>PROJECT</u>	<u>ACRES</u>	<u>DU</u>	<u>BOS APPROVAL</u>
PZ-025-99 PZ-PD-025-99	Skyline Ranch (Richard Andrews)	532	1,790	3/15/00
PZ-033-99 PZ-PD-033-99	Morning Sun Farms (David Cravath)	342	1,195	1/12/00
PZ-34-99 PZ-PD-034-99	Cambria (Sean Lake)	185	871	3/29/00
PZ-037-99 PZ-PD-037-99	San Tan Heights (CMX Group, Inc.)	2,184	5,266	3/1/00
PZ-006-00 PZ-PD-006-00	San Tan Shadows (Paul Jorde)	467	1,642	4/19/00
PZ-005-00 PZ-PD-005-00	Mark Mounce	80	54	4/19/00
PZ-009-00 PZ-PD-009-00	Circle Cross Ranch (Mike Ingram)	1,400	5,070	5/17/00
PZ-015-00	Skyline Estates (Lyle S. Richardson)	284	1,168	7/5/00
PZ-019-00 PZ-PD-019-00	Quail Run (Mark Adams)	103	351	6/14/00
PZ-020-00 PZ-PD-020-00	Johnson Farms (Allan Thompson)	774	2,615	8/16/00
PZ-026-00 PZ-PD-026-00	Lookout Mountain	79	278	8/20/00
PZ-031-00 PZ-PD-031-00	Superstition Views	192	31	8/30/00
PZ-036-00 PZ-PD-036-00	Castlegate	1,409	416	9/27/00
PZ-043-00 PZ-PD-043-00	Mystic Lake Ranch (Amendment)	4,053	1,240	10/18/00
PZ-046-00	Bonanza Highlands	25	40	10/25/00

<u>CASE NO.</u>	<u>PROJECT</u>	<u>ACRES</u>	<u>DU</u>	<u>BOS APPROVAL</u>
PZ-048-00 PZ-PD-048-00	Walker Butte	1,587	5,240	10/25/00
PZ-050-00	Quintanna Hill Estates	42	31	10/25/00
PZ-054-00 PZ-PD-054-00	Pecan Ranch (Amendment)	882	3,042	11/1/00
PZ-055-00 PZ-PD-055-00	Morning Sun Farms (Amendment)	480	1,416	11/1/00
PZ-059-99 PZ-PD-059-00	Road Runner Estates	5,800	17,980	11/1/00
PZ-075-00 PZ-PD-075-00	Era Mae	1,410	536	P&Z-12/21/00
PZ-063-00 PZ-PD-063-00	Magma Ranches	1,035	317	P&Z - 1/18/01
PZ-065-00 PZ-PD-065-00	Ocotillo Verde	1,592	455	P&Z - 1/18/01

Updated 11/22/00

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RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE)
APPLICATIONS OF H2O, INC. AND)
JOHNSON UTILITIES COMPANY FOR)
AN EXTENSION OF THEIR)
CERTIFICATES OF CONVENIENCE AND)
NECESSITY.)

DOCKET NOS. W-02234A-00-0371
WS-02987A-99-0583

IN THE MATTER OF THE APPLICATION)
OF JOHNSON UTILITIES, L.L.C., DBA)
JOHNSON UTILITIES COMPANY, FOR)
AN EXTENSION OF ITS CERTIFICATE)
OF CONVENIENCE AND NECESSITY TO)
PROVIDE WATER AND WASTEWATER)
SERVICE TO THE PUBLIC IN THE)
DESCRIBED AREA IN PINAL COUNTY,)
ARIZONA.)

DOCKET NO. WS-02987A-00-0618

IN THE MATTER OF THE APPLICATION)
OF DIVERSIFIED WATER UTILITIES,)
INC. TO EXTEND ITS CERTIFICATE OF)
CONVENIENCE AND NECESSITY.)

DOCKET NO. W-02859A-00-0774

IN THE MATTER OF THE APPLICATION)
OF QUEEN CREEK WATER COMPANY)
TO EXTEND ITS CERTIFICATE OF)
CONVENIENCE AND NECESSITY.)

DOCKET NO. W-01395A-00-0784

REBUTTAL TESTIMONY OF

JIM WRIGHT

ON BEHALF OF

DIVERSIFIED WATER UTILITIES, INC.

JANUARY 30, 2001

I. INTRODUCTION

Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A: My name is Jim Wright. I am the owner of Statewide Disinfection Service and my business address is 4826 East Fountain Street, Mesa, Arizona 85205.

Q. WHAT IS YOUR RELATIONSHIP TO DIVERSIFIED WATER UTILITIES, INC.?

A. I am DWU's certified operator.

Q. WOULD YOU BRIEFLY SET FORTH YOUR WATER EXPERIENCE AND LICENSES?

A. I hold a Grade IV Operator's Certificate, the highest possible Grade, in water treatment, water distribution and wastewater collection and a Grade III Operator's Certificate for wastewater treatment. I hold a degree from Rio Salado Community College in water and wastewater technology and I hold a State of Arizona Teaching Certificate. Rio Salado Community College has me teaching three classes in its water and wastewater technology program. I have also given eight-hour seminars on water and wastewater and provide disinfection and training for contractors. I have been an employee of the City of Scottsdale for sixteen years and am classified as a Water Maintenance Technician II, my duties include disinfecting wells, pipelines, the groundwater treatment plant, the distribution system, and especially pipeline reservoir and disinfection aspects thereof. I also interact with customers, answer their questions and deal with their complaints for the City of Scottsdale. I took all the compliance monitoring samples, THM's and construction samples for the City of Scottsdale for years. I have owned and operated Statewide Disinfection Service for eleven years, which is hired to advise and assist in the disinfection of water facilities such as when new lines, wells and reservoirs are installed

1 or when a contamination problem is identified. Prior to working with the City of
2 Scottsdale, I worked installing and disinfecting pumps for Hennesy Pump & Supply Co.

3
4 Q. WHAT ARE YOUR DUTIES FOR DIVERSIFIED WATER UTILITIES, INC.?

5 A. I have been DWU's Certified Operator for two years. Every water system with 15
6 connections or more than 25 full time residents is required by Arizona law to have a
7 Certified Operator. Although Scott Gray is also a Certified Operator, I am the person
8 registered as the Certified Operator for the DWU system. I am responsible for ensuring
9 the system is properly running, that all required water quality tests are performed and that
10 chlorination levels are maintained. For a system the size of DWU, this generally requires
11 a once a week visit to the system to do a visual inspection of the wellsite, booster stations
12 and chlorination station. During my visit, I make any adjustments to the system I deem
13 necessary to ensure that the system is running properly. I check for chlorine residuals and
14 adjust the chlorine accordingly. I am also involved in addressing unexpected service
15 problems as they arise and resolving customer concerns.
16

17
18 Q. WHAT IS YOUR OPINION REGARDING THE DIVERSIFIED SYSTEM AND ITS
19 OPERATION PRACTICES?

20 A. DWU has made substantial investment to upgrade and improve its system over the last
21 few years. Most of its system is either new or refurbished. Recent improvements to the
22 system have been installed pursuant to standards intended to ensure that the facilities will
23 meet the long-term needs of the Company's customers. DWU has a good maintenance
24 program and as I indicated, I am responsible for doing regular inspections and testing to
25 ensure the system is maintained properly. In summary, DWU has a very good system
26

1 and its management is doing a good job in keeping the system well maintained and
2 providing service to its customers.

3
4 Q. ARE YOU SUGGESTING THAT THE SYSTEM CANNOT BE IMPROVED?

5 A. In evaluating any system, you are evaluating it at a point and time. DWU's system has
6 significantly improved as its system has grown over the past few years. Properly
7 managed growth is the best means for a water system to improve. The expansion of
8 DWU's system over the last two years in adding approximately 170 customers has
9 enabled it to significantly improve its basic infrastructure and its ability to provide
10 reliable water service to its customers. However, growth also brings new demands.
11 DWU's water storage and production capabilities should be expanded. It is my
12 understanding that DWU is seeking WIFA financing to address these two issues and is
13 proceeding with the construction of a new 200,000-gallon storage tank and 5,000-gallon
14 pressure tank. The system's current water production, with the expanded storage
15 capacity, provides a reliable water system for existing customers and a solid base upon
16 which to service new growth.

17
18
19 Q. IS GROWTH IMPORTANT TO DWU?

20 A. Yes. Growth is an important element to the stability of any water system. A contiguous
21 interconnected system with multiple wells and storage disbursed throughout the service
22 territory is more reliable than a single well system. Further, growth allows transmission
23 lines to expand, interconnect and brings better balance to the entire system. Finally, there
24 are economies of scale associated with serving a greater number of customers.

25
26

1 Q. DO YOU HAVE RESPONSIBILITY FOR RESPONDING TO CONSUMER
2 COMPLAINTS?

3 A. Yes, to the extent the complaint deals with the operations of the system. For example, I
4 usually am involved in addressing complaints regarding line breaks, water quality,
5 pressure or other issues that arise from time to time.

6
7 I discuss the system and its operations with customers directly and provide them with my
8 card so they can call me directly.

9
10 Q. IN THE TWO YEARS THAT YOU HAVE BEEN ACTING AS THE CERTIFIED
11 OPERATOR FOR DWU, HAVE YOU HAD TO RESPOND TO VERY MANY
12 CUSTOMER COMPLAINTS?

13 A. There have been relatively few customer complaints regarding service. However,
14 whenever there is a complaint, DWU responds promptly and addresses the problem.

15
16 Q. WOULD YOU DESCRIBE THE NATURE OF THE COMPLAINTS YOU HAVE
17 DEALT WITH ON BEHALF OF THE COMPANY?

18 A. I would describe the majority of the complaints as directly related to activities of entities
19 other than DWU. As mentioned earlier, there has been a significant amount of new lines
20 installed within the last few years. In October, one of these new lines had a break. As a
21 result of the line break, a number of customers were out of service for several hours.
22 Further, a valve had been improperly left in the closed position by the contractor, which
23 resulted in stale water accumulating in the closed portion of the line. When this valve
24 was opened as part of the line break repair, stale water was delivered to customers. The
25 water had an odor and was somewhat discolored. As a result of both the outage and the
26 delivery of stale water, DWU received numerous complaints during a very short period

1 of time in October. After discovering this one valve was not properly positioned, I did an
2 inspection on all the valves on the system, especially those valves that had been recently
3 installed. My inspection discovered that a number of the valves were left in an improper
4 position, by the landowner's contractor.
5

6 Q. HAVE YOU ALSO DEALT WITH WATER QUALITY COMPLAINTS IN THE NEW
7 RANCHO VISTA SUBDIVISION?

8 A. Yes. In order to serve Phase One of this subdivision, approximately two miles of 8 and 6
9 inch pipeline was installed. The first phase of the subdivision has 36 lots. However,
10 there are only three customers on this portion of the line. With normal usage, it would
11 take these three customers two or three weeks to use all the water in the line one time. As
12 a result, these three customers complained regarding the quality of water they were
13 receiving. To address the issue, I now flush the line every week and test the chlorine
14 level in this portion of the system. This process was instituted approximately four weeks
15 ago and since then it is my understanding that all water quality complaints have ceased.
16

17
18 Q. WHAT IS THE LONG-TERM SOLUTION FOR THIS STALE WATER ISSUE?

19 A. Growth. When more people are utilizing this line, water will be consumed more
20 frequently eliminating the issue of stale water.
21

22 Q. ARE THERE ANY OTHER SPECIFIC COMPLAINTS THAT YOU CAN RECALL
23 ADDRESSING IN THE LAST FEW MONTHS?

24 A. Only one. I responded to a complaint regarding sand in the water. I went to the
25 customer's home to discuss the issue. She indicated that her water was filled with sand.
26 I asked for a glass of water so I could examine the problem. The glass had no sand in it

REBUTTAL TESTIMONY OF JIM WRIGHT

DOCKET NOS. W-02234A-00-0371; WS-02987A-99-0583; WS-02987A-00-0618; W-02859A-00-0774 and
W-01395A-00-0784

PAGE 6

1 whatsoever. She then indicated that it did not happen all the time. I asked her to save a
2 sample of sandy water next time this occurred and to call me. I gave her my card. She
3 has not called back.

4
5 Q. ARE YOU AWARE THAT DIVERSIFIED IS SEEKING TO EXPAND ITS
6 CERTIFICATED AREA BOTH TO THE NORTHWEST AND SOUTH OF ITS
7 EXISTING CERTIFICATED AREA?

8 A. Yes.

9
10 Q. DO YOU HAVE AN OPINION AS TO WHETHER THE PUBLIC WOULD BE
11 SERVED BY SUCH AN EXPANSION OF DIVERSIFIED'S CERTIFICATED AREA?

12 A. Yes. I think the existing customers of DWU and the public generally would be served by
13 allowing DWU to expand into these areas for the reasons I previously mentioned relating
14 to growth. Although the existing system is well designed and well operated, it will only
15 improve with reasonable growth.

16
17 My experience with DWU has shown that DWU is committed to building a high quality
18 system. Unfortunately, DWU's existing certificated area has largely been developed
19 through lot splitting. As a result, it has been difficult for DWU to require improvements
20 to be installed by the developer of the property because they are not approached until the
21 lot has been sold to the ultimate customer, rather than by the person who is selling off
22 multiple lots. Despite this, DWU has insisted, often at its own expense, that lines be
23 properly sized and installed to meet reasonable operational needs rather than simply a
24 single customer. If DWU were, for example, to have subdivisions installed both in the
25 northwest portion of its system (e.g., Ware Farms and The Home Place in Sections 28
26 and 33, T2S, R8E) and in the southern portion of this system (Bella Vista Farms), the

REBUTTAL TESTIMONY OF JIM WRIGHT

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1 system would be greatly enhanced. These developers would be required to install or pay
2 for the storage and production capability to serve their individual subdivisions and those
3 new production and storage sources could then be interconnected with the rest of
4 Diversified's system. Further, a larger customer base will produce more revenues, which
5 will allow Diversified to hire employees rather than contractors.
6

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8 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

9 A. Yes.
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 WILLIAM A. MUNDELL
4 CHAIRMAN
5 JIM IRVIN
6 COMMISSIONER
7 MARC SPITZER
8 COMMISSIONER

9 IN THE MATTER OF THE)
10 APPLICATIONS OF H2O, INC. AND) **DOCKET NOS. W-02234A-00-0371**
11 JOHNSON UTILITIES COMPANY FOR) **WS-02987A-99-0583**
12 AN EXTENSION OF THEIR)
13 CERTIFICATES OF CONVENIENCE AND)
14 NECESSITY.)

15 IN THE MATTER OF THE APPLICATION)
16 OF JOHNSON UTILITIES, L.L.C., DBA) **DOCKET NO. WS-02987A-00-0618**
17 JOHNSON UTILITIES COMPANY, FOR)
18 AN EXTENSION OF ITS CERTIFICATE)
19 OF CONVENIENCE AND NECESSITY TO)
20 PROVIDE WATER AND WASTEWATER)
21 SERVICE TO THE PUBLIC IN THE)
22 DESCRIBED AREA IN PINAL COUNTY,)
23 ARIZONA.)

24 IN THE MATTER OF THE APPLICATION) **DOCKET NO. W-02859A-00-0774**
25 OF DIVERSIFIED WATER UTILITIES,)
26 INC. TO EXTEND ITS CERTIFICATE OF)
27 CONVENIENCE AND NECESSITY.)

28 IN THE MATTER OF THE APPLICATION) **DOCKET NO. W-01395A-00-0784**
29 OF QUEEN CREEK WATER COMPANY)
30 TO EXTEND ITS CERTIFICATE OF)
31 CONVENIENCE AND NECESSITY.)

32 **REBUTTAL TESTIMONY OF**

33 **GREG POTTER**

34 **ON BEHALF OF**

35 **DIVERSIFIED WATER UTILITIES, INC.**

36 **JANUARY 30, 2001**

I. INTRODUCTION

Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A: My name is Greg Potter. I work with Sunrise Engineering, Inc. located at 3660 East University Drive, Suite 2, Mesa, Arizona 85205.

Q. WHAT IS YOUR RELATIONSHIP TO DIVERSIFIED WATER UTILITIES, INC. ("DWU")?

A. Sunrise Engineering, Inc. has been performing engineering services for DWU for several years. I started working on DWU's system in the fall of 2000.

Q. WOULD YOU BRIEFLY SET FORTH YOUR EXPERIENCE?

A. I received my Bachelor of Science in Engineering from Arizona State University in 1993. I am a registered professional engineer in both Arizona and Utah. My Arizona Registration Number is 35581. I have worked with Sunrise Engineering, Inc. for eight years specializing in water, sewer and storm drain systems. I have prepared water master plans and worked on both public and private water systems. I have been a contract City Engineer for two cities in Utah and as such interfaced with private water companies and developers on behalf of the City to ensure development occurred consistent with the City's standards and regulations. I moved to Arizona in September of 2000.

Q. HOW WOULD YOU CHARACTERIZE DWU'S DIRECTION TO YOU?

A. I have been directed by DWU to ensure that its water system is designed to meet all Arizona Department of Environmental Quality and Maricopa Association of Government standards. DWU has repeatedly expressed its desire to ensure that its system is constructed to meet existing and reasonably anticipated needs.

1 Q. WHAT ARE SOME OF THE PROBLEMS FACED BY WATER COMPANIES
2 DEALING WITH LOT SPLITTERS AND SMALL SUBDIVIDERS?

3 A. When interfacing with small developers and lot splitters, it is extremely difficult for
4 water companies to get cooperation to build a quality water system. In contrast, larger
5 subdividers, such as those proposed at the Ware Farms, The Home Place and Bella Vista
6 Farms represent strong potential for installation of a good quality system. Developers
7 who are working on large subdivisions and master planned communities are more
8 accustomed to expending the monies necessary to meet governmental standards and good
9 utility practices because they are better financed, had more experience with water utility
10 requirements and they recognize the value of installing good utility facilities up front. In
11 contrast, it has been my experience that you must carefully watch lot splitters and small
12 developers because they take every cost cutting opportunity available to them.
13

14
15 Q. HOW WOULD YOU RATE DWU'S SYSTEM?

16 A. For a small system serving approximately 170 customers, first begun in 1962, I would
17 rate it as above average. Many of the facilities have been installed or refurbished
18 recently. The current system, however, is short on storage, but DWU is actively
19 remedying that situation and a 200,000-gallon storage tank and 5,000-gallon pressure
20 tank are expected to be installed and operational by the end of February.
21

22 Q. ARE YOU AWARE THAT DWU IS SEEKING TO EXTEND ITS CERTIFICATE OF
23 CONVENIENCE AND NECESSITY BOTH TO THE NORTHWEST AND SOUTH?

24 A. Yes.
25
26

1 Q. DO YOU HAVE ANY OPINION REGARDING WHETHER EXPANSIONS ARE IN
2 DWU'S AND THE PUBLIC'S BEST INTEREST?

3 A. DWU's existing system will be advantaged by good quality growth both within and
4 adjacent to its existing certificated area. Expansion into Sections 28 and 33, Township 2
5 South, Range 8 East with good development will allow DWU to ultimately loop its entire
6 system, provide an opportunity to increase its production and storage capacity in a
7 manner that will enhance system reliability benefiting both DWU and the public. These
8 are all essential to providing water flow in response to unusual demands, such as fighting
9 fires.
10

11
12 Q. WOULD EXPANSION TO THE SOUTH ALSO AID THE COMPANY AND THE
13 PUBLIC INTEREST?

14 A. Yes. Expansion into Sections 13, 14, 15, 16 and 23, Township 3 South, Range 8 East
15 and Section 18, Township 3 South, Range 9 East will allow the existing system and the
16 public to benefit from the quality growth that is proposed by the Bella Vista Farms
17 development.
18

19 Q. WOULD YOU ELABORATE ON THE ENGINEERING REASONS THAT SUPPORT
20 DWU'S REQUEST TO EXPAND ITS CERTIFICATED AREA?

21 A. During the system's recent expansions all of the distribution system installations have
22 been sized 6-inch or larger in anticipation of serving other areas outside of the current
23 service area. DWU has anticipated this expansion and therefore has required each new
24 line extension to install 6-inch pipe or larger. In addition with the construction of the
25 new storage facility and pressure tank the company is poised to allow growth within and
26 outside the certificated area. Also, if the certificated area is expanded it will allow more

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1 opportunities to loop the existing system with any new installations, which will be
2 beneficial to the system.

3
4 Q. CAN DWU SERVE THESE LANDS WITH ITS EXISTING SYSTEM?

5 A. Its existing system provides a good base upon which to extend facilities and meet interim
6 water needs. However, additional infrastructure, including new wells and storage would
7 need to be constructed to meet the new demands of development in these areas.

8
9
10 Q. WOULD YOU CHARACTERIZE DWU AT A TRANSITIONAL STAGE OF
11 DEVELOPMENT?

12 A. DWU is a small system. Such systems usually rely upon contractual services to meet
13 their needs and generally have limited operating reserves. The addition of good quality
14 subdivisions is an important element to enhancing DWU's water system reliability and
15 its ability to meet unexpected contingencies. System and customer growth will not only
16 enhance system reliability, but also permit the DWU to transition from relying
17 exclusively on labor to adding employees and expend funds on preparing master plans
18 and enforcing standards.

19
20 Q. IS IT YOUR UNDERSTANDING THAT A GOOD PORTION OF DWU'S EXISTING
21 CERTIFICATED AREA IS STATE LAND AND IS UNLIKELY TO BE DEVELOPED
22 IN THE NEAR FUTURE?

23 A. According to the maps I have reviewed, approximately forty percent of DWU's
24 certificated area is owned by the State. Thus, it is important that DWU be able to reach
25 beyond its existing boundaries and secure the type of well-financed development
26 represented by Bella Vista Farms, Ware Farms and The Home Place.

1 Q. WHAT IS DWU DOING TO ASSIST IT IN SERVING THESE EXTENDED AREAS?

2 A. In addition to continuing to improve its existing system by improving its wellsite, adding
3 storage and enhancing its transmission lines, DWU is mapping and modeling its existing
4 system so that it will be in a position to promptly advise developers what facilities must
5 be added. We have also assisted DWU in developing standards to ensure quality water
6 infrastructure applicable to all improvements to DWU's water system.

7
8 Q. DO YOU BELIEVE DWU IS A FIT AND PROPER ENTITY TO PROVIDE WATER
9 SERVICE TO THESE EXTENDED AREAS?

10 A. Yes. From an engineering standpoint, DWU is taking those steps which are prudent to
11 not only meet the needs of its existing customers, but to be prepared to serve additional
12 customers in the future.

13
14 Q. DO YOU BELIEVE THE PUBLIC INTEREST WILL BE SERVED BY EXTENDING
15 DWU'S CERTIFICATED AREA?

16 A. Yes. As stated before, expansion in the Northwest and Southern portion of DWU's
17 system coupled with good quality development therein will enhance system reliability.
18 As the system expands and more connections are added to the system this will allow
19 DWU to more readily staff and plan for the system, which in turn will serve the public
20 interest by providing the public served a high quality water system.

21
22 Q. DO YOU AGREE WITH THE STAFF'S RECOMMENDATION REGARDING
23 EXPANSION OF DWU'S CERTIFICATED AREA?

24 A. I agree that DWU should expand to the South as recommended by Staff. However, I also
25 believe it should be allowed to expand in the Northwest of its certificated area. Without
26

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1 expansion into the Northwest portion, DWU will either have to build larger lines to
2 transport water or build lines that have no service for long distances without the
3 opportunity to loop the distribution system through sections 28 and 33 and will subject
4 the water to becoming stagnant. The most critical area of expansion from an engineering
5 point of view would be Section 33, which I understand contains the Ware Farms
6 development. The second most critical expansion area would be Section 28, which I
7 understand contains The Home Place development. The expansions into Sections 29 and
8 5, although beneficial to DWU are not as important.
9

10
11 Q. DO YOU HAVE AN OPINION REGARDING STAFF'S REQUIREMENT THAT THE
12 CERTIFICATES BE CONDITIONALLY GRANTED?

13 A. Large developments, especially the Bella Vista Farms development, but even Ware
14 Farms and The Home Place, could easily take more than two years before actual
15 customers are being served or even facilities are installed. Both landowners and the
16 water company should be able to rely on who is going to serve an area. It is important for
17 the water company to construct its facilities and improvements based upon reliable
18 growth expectations. The areas of expansion sought by DWU are contiguous to its
19 existing area and are all areas of reasonable expansion for DWU. The Commission
20 should not condition the grant of the certificate to DWU on demonstration that
21 development actually occurs in a time certain.
22

23 Q: DOES THIS MEAN THERE IS NO PRESENT NEED OR NECESSITY FOR WATER
24 SERVICE?

25 A: No. There is no dispute that all these areas are actively pursuing the appropriate
26 governmental approvals. Developments such as Bella Vista Farms, the Ware Farms or

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1 The Home Place, for example, all need reasonable assurance how they will receive water
2 service well before finalization of governmental approvals. Further, it is important to the
3 water company to know what areas it will ultimately serve in master planning its existing
4 certificated area. The fact that growth may ultimately be slower than originally expected
5 is generally irrelevant. All the areas sought by DWU have demonstrated a need for
6 utilities to be authorized to serve their lands. Therefore, I would recommend that the
7 certificated area not be subject to being deleted because no development occurred within a
8 specified period of time.
9

10 Q: DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?
11

12 A: Yes it does.
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